

This material represents the first draft of an eventual policy package; there will be several more iterations before the bill is finalized for submissions. Not all ideas discussed to date are included in this content, additional material will be brought forward at the September meeting. It is likely that not all ideas included in this content or corresponding bill draft will be included in the final bill filed in October. The goal of this document is to aid discussion the ideas and intent of the proposed policies.

You may notice discrepancies between the bill draft distributed today and ideas presented in these slides. Conversations with a number of stakeholders shaped these policy ideas, and some changes were made while the official bill draft was processing in the North Dakota system. Ideas presented in this content are more current than language in the bill draft.

GOALS OF JUSTICE REINVESTMENT IN NORTH DAKOTA

- **Avoid hundreds of millions in corrections spending.**
- **Improve services and resources for victims of crime.**
- **Reduce recidivism with stronger supervision.**
- **Expand access to high quality programs and treatment.**

POLICIES TO SUPPORT VICTIMS OF CRIME

- **Policy Option #1:** Create stronger protections for survivors of domestic violence and help promote reform and recovery for batterers.

POLICIES TO AVERT GROWTH IN PRISON POPULATIONS AND CORRECTIONS COSTS

- **Policy Option #2:** Hold people with lower-level offenses accountable with probation and treatment.
- **Policy Option #3:** Tailor responses to supervision based on risk and seriousness.
- **Policy Option #4:** Increase use of good time sentence reductions to limit time in incarceration.

POLICIES TO REDUCE RECIDIVISM BY STRENGTHENING COMMUNITY SUPERVISION

- **Policy Option #5:** Use swift, certain, and proportionate sanctions and incentives for individuals on probation or parole
- **Policy Option #6:** Frontload supervision resources during the period risk of recidivism is the highest.
- **Policy Option #7:** Focus supervision resources on those most likely to re-offend.
- **Policy Option #8:** Ensure that people with violent offenses released from prison to the community are supervised.

Detailed Policy Options

POLICIES TO SUPPORT VICTIMS OF CRIME

POLICY #1: Create stronger protections for survivors of domestic violence and help promote reform and recovery for batterers

1A. Require that all defendants with pending charges related to domestic violence undergo a pretrial risk assessment, including a **lethality assessment**, to inform decisions to detain or release before trial.

1B. Require that sentences for offenses defined as domestic violence include a **period of probation**, even for misdemeanor offenses.

1C. The sentence for a domestic violence offense must include an order to **complete a batterers intervention program** as a condition of probation.

1D. A **batterers intervention standards oversight committee** shall be formed to establish minimum standards for BIPs, revise the standards as is deemed necessary, and make the standards available to the public.

1E. A batterer's intervention programs must be **certified by the state** in order to meet the conditions of probation.

POLICIES TO AVERT GROWTH IN PRISON POPULATIONS AND CORRECTIONS COSTS

Policy #2: Hold people with lower-level offenses accountable with probation and treatment.

2A. Separate the more than **350 class C felonies** into two classes of offenses. Retain some offenses in as class C felonies and move certain offenses to class A misdemeanors. **Retain current penalties** for class C felonies.

2B. Statutorily establish that the court will impose a **sentence of probation or a fully suspended incarceration sentence** for class A misdemeanors.

2C. Statutorily establish that the court will impose a **sentence of community service** for class B misdemeanors.

2D. **Allow exceptions for sentences to incarceration** if the person is concurrently or consecutively sentenced to imprisonment on a more serious charge or there are substantial and compelling reasons why the defendant cannot be effectively and safety supervised in the community.

Policy #3: Tailor responses to supervision based on risk and seriousness.

3A. **Classify violations of probation and parole** into compliance violations, risk violations, and revocation violations.

3B. Restrict responses to compliance violations to **community sanctions** or short periods of incarceration.

3C. Allow community sanctions or longer periods of **confinement of up to 30 days** for risk violations.

3D. Allow for the initiation of **revocation proceedings** for revocation violations.

Policy #4: Increase use of good time sentence reductions to limit time in incarceration.

4A. Performance criteria includes participation in court-ordered or staff-recommended **treatment and education programs** and **good work performance**.

4B. While incarcerated in a correctional facility, an offender may earn no more than a one-day sentence reduction per six days served. An inmate sentenced to jail may receive good time sentence reductions for any sentence of which incarceration time is longer than 60 days.

4C. An offender may receive **sentence reduction for time spent in custody** prior to sentence and commitment but is not eligible for sentence reduction or sentence reduction credit for time on pretrial probation or other community supervision.

POLICIES TO REDUCE RECIDIVISM BY STRENGTHENING COMMUNITY SUPERVISION

Policy #5: Improve use of swift, certain, and proportionate sanctions and incentives for individuals on probation or parole.

5A. Require probation and parole to apply intermediate measures and incentives in accordance with a **formalized matrix of behaviors and corresponding responses**. The matrix must require officers to **respond swiftly, certainly, and proportionately** to the defendant based on the individual's risk and the severity of the violation and be used in pursuit of improved compliance.

5B. When a petition for revocation is submitted to the court, it must **include documentation of violations and responses to violations** imposed by probation or parole officers.

Policy #6: Frontload supervision resources during the period when risk of recidivism is the highest.

6A. Maintain current caps on **three year probation terms** for class AA, class A, class B and class C felony offenses and maintain the **360 day probation cap** for class B misdemeanors.

6B. **Reduce the cap** for class A misdemeanors to one year.

POLICY #7: **Focus supervision recourses** on those most likely to re-offend.

7A. A defendant is eligible for **presumptive termination and discharge** from probation after a period of 12 consecutive months on probation without a risk or revocation violation. **Exemptions** to automatic termination are made for violent offenders.

7B. If a departure is made from the presumptive termination, the judge shall state on the record the **reason for denying discharge** from supervision.

7C. A defendant with outstanding fines, fees, or restitution orders is **not eligible for early termination**, but may be placed on the lowest level of supervision for the remainder of the payment schedule.

POLICY OPTION 8: Ensure that people with violent offenses released from prison to the community are supervised.

8A. Require violent offenders as defined in subsection 1 of 12.1-32-09.1 to have one year of **post release supervision**.

Introduced by

1 A BILL for an Act to create and enact sections 12-59-05.1, 12-59-07.1, 12.1-17-13.1,
2 subsections 3 and 4 of section 12.1-32-07.1, and subsection 18 of section 54-23.3-04 of the
3 North Dakota Century Code, relating to a risk and needs assessment tool, conditions of parole,
4 presumptive termination of probation, and a batterers intervention standards oversight board; to
5 amend and reenact sections 12-44.1-32, 12-54.1-01, 12-59-08, 12-59-15, 12.1-17-13,
6 12.1-32-01, 12.1-32-03.1, subsection 2 of section 12.1-32-06.1, section 12.1-32-07,
7 subdivision c of subsection 4 of section 12.1-32-08, sections 12.1-32-09.1, 12.1-32-14,
8 12.1-32-16, 39-24.1-07, subsection 17 of section 50-06-05.1, subdivision a of subsection 7 of
9 section 54-23.4-01, and section 54-23.4-06 of the North Dakota Century Code, relating to
10 performance-based sentence reduction, medical paroles, responses to parole and probation
11 violations, classification of offenses, conditions of probation, presumptive termination of
12 probation, treatment for domestic violence offenders, the sentencing of violent offenders, the
13 supplemental nutrition assistance program, and victim compensation; to repeal section
14 12-59-22 of the North Dakota Century Code, relating to the twenty-four seven sobriety program;
15 and to provide for the creation of a pretrial services program pilot project within the department
16 of corrections and rehabilitation.

17 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

18 **SECTION 1. AMENDMENT.** Section 12-44.1-32 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **12-44.1-32. Performance-based sentence reduction.**

21 1. The presiding judge of a judicial district in which a correctional facility is located, after
22 consultation with the other judges in the district, may authorize the facility
23 administrator to provide for sentence reductions. An offender committed to the legal
24 and physical custody of a county jail or regional correction center may earn sentence

1 reductions based upon performance criteria established ~~throughby~~ the administrator
2 except that sentence reductions may not be given to offenders sentenced under
3 section 12.1-32-09.1. Performance criteria must include participation in court-ordered
4 or staff-recommended treatment, education programs, and good work performance.
5 The sentence reduction policy must be written and available to the public and
6 offenders.

7 2. An offender may receive good time sentence reductions for any sentence longer than
8 sixty days or for time spent in custody before sentencing and commitment, but is not
9 eligible for sentence reduction or credit for time spent while on pretrial probation or
10 community supervision. While incarcerated in a correctional facility, an offender may
11 earn no more than a one-day sentence reduction per six days served.

12 **SECTION 2. AMENDMENT.** Section 12-54.1-01 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **12-54.1-01. Performance-based sentence reduction.**

15 Except as provided under section 12.1-32-09.1, offenders committed to the legal and
16 physical custody of the department of corrections and rehabilitation are eligible to earn
17 sentence reductions based upon performance criteria established through department and
18 penitentiary rules. Performance criteria includes participation in court-ordered or
19 staff-recommended treatment and education programs and good work performance. The
20 department may credit an offender committed to the legal and physical custody of the
21 department who is eligible for sentence reduction five days good time per month for each month
22 of the sentence imposed. The department may not credit an offender with any sentence
23 reduction for time spent in custody prior to sentence and commitment, ~~for time.~~ Time under
24 supervised probation, or for any sentence where the incarceration time is six months or less is
25 not eligible for sentence reduction or sentence reduction credit.

26 **SECTION 3.** Section 12-59-05.1 of the North Dakota Century Code is created and enacted
27 as follows:

28 **12-59-05.1. Structured decisionmaking.**

29 The parole board shall adopt evidence-based parole guidelines to assist in evaluating an
30 inmate's eligibility and suitability for parole which must incorporate the validated risk and needs

1 assessment tool for parole decisionmaking developed by the department of corrections and
2 rehabilitation.

3 **SECTION 4.** Section 12-59-07.1 of the North Dakota Century Code is created and enacted
4 as follows:

5 **12-59-07.1. Conditions of parole.**

6 The parole board may require an inmate to comply with any the following conditions upon
7 release:

8 1. Community service.

9 2. Day reporting.

10 3. Curfew.

11 4. Home confinement.

12 5. House arrest.

13 6. Electronic monitoring.

14 7. Placement in a residential halfway house.

15 8. Intensive supervision.

16 9. Up to five nonsuccessive periods of incarceration during any twelve-month period,
17 each of which may not exceed seventy-two consecutive hours.

18 10. Participation in the twenty-four seven sobriety program.

19 **SECTION 5. AMENDMENT.** Section 12-59-08 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **12-59-08. EmergencyMedical paroles.**

22 TheIf the physician at a correctional facility has determined an inmate has a serious or
23 terminal medical condition, the parole board may consider whether angrant the inmate may
24 receive an emergencya medical parole at a meeting scheduled by the chairman. The board
25 may request the inmate to personally appear before the board before the board makes a
26 decision whether to grant the inmate an emergency parole. The board may grant or deny an
27 emergency parole, or grant a conditional emergency parole, or continue its consideration to
28 another meeting. Two members of the parole board may grant emergency parole, subject to
29 terms and conditions of emergency parole that may be established by the two members of the
30 parole board, or by the department of corrections and rehabilitation with the approval of the
31 parole board, notwithstanding the limitations on parole eligibility under sections 12.1-32-02.1

1 and 12.1-32-09.1. An inmate who receives an emergency parole remains under the jurisdiction
2 of the parole board until the expiration of the maximum term or terms of imprisonment for which
3 the inmate was sentenced, less any sentence reduction the inmate has received.

4 **SECTION 6. AMENDMENT.** Section 12-59-15 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12-59-15. Breach of parole - Responses to violations - Hearings - Order of**
7 **recommitment.**

8 1. Violations of parole are divided into three classes:

9 a. A "compliance violation" means any violation of a condition of supervision which
10 is not a risk violation or revocation violation and may be sanctioned by:

11 (1) Extension of the period of supervision within the period provided by law;

12 (2) Additional reporting and compliance requirements;

13 (3) Testing for the use of drugs and alcohol;

14 (4) If ordered by the court, counseling and treatment for emotional or other
15 mental health problems, including substance abuse; or

16 (5) Other community constraints and conditions as provided in this chapter.

17 b. A "risk violation" means arrest for absconding or arrest for a new felony or
18 misdemeanor offense other than a revocation violation offense, or the sixth or
19 subsequent individually sanctioned compliance violation and may be sanctioned
20 by:

21 (1) Up to thirty days' confinement; or

22 (2) Any sanction provided as a condition of parole.

23 c. A "revocation violation" means an arrest for a violent felony offense or a violation
24 of a protective order and may be sanctioned by:

25 (1) An order for revocation of probation; or

26 (2) Any sanction described in this section.

27 2. A parole and probation officer may administer the conditions of parole provided in
28 section 12.1-59-7.1. An officer shall obtain approval from the parole board before any
29 period of confinement of more than seventy-two hours may be imposed.

1 3. Any intermediate measure or incentive must be applied in accordance with a matrix of
2 behaviors and corresponding responses developed by the department of corrections
3 and rehabilitation.

4 4. When it is alleged that a parolee has violated any of the terms or conditions of parole
5 established by the parole board or by the department of corrections and rehabilitation,
6 the director of the department of corrections and rehabilitation may issue a warrant for
7 the arrest of the parolee.

8 2.5. Upon issuance of a warrant of arrest for a parole violation, the running of the time
9 period of parole must be suspended until the parole board issues a final order under
10 this section. The parolee is entitled to credit for time spent in physical custody from the
11 time of arrest until the time the parole board issues a final order.

12 3.6. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the
13 arrest and reasonably near the place of the alleged violation or arrest, to determine
14 whether there is probable cause to find that the parolee violated any of the terms and
15 conditions of parole established by the board or by the department of corrections and
16 rehabilitation.

17 4.7. The preliminary hearing must be conducted before the director of the department of
18 corrections and rehabilitation or other hearing officer authorized by the director. The
19 preliminary hearing must be conducted by a disinterested hearing officer not directly
20 involved in the supervision of the parolee or by the person bringing the allegation of a
21 parole violation.

22 5.8. If the hearing officer determines there is probable cause to find that the parolee has
23 violated any of the terms and conditions of parole established by the board or by the
24 department of corrections and rehabilitation, the board may redetermine the time
25 remaining in the period of parole to reflect any portion of the period during which the
26 parolee was not under supervision or not in the custody of law enforcement personnel
27 in the state.

28 6.9. If the hearing officer determines there is probable cause to find that the parolee has
29 violated any of the terms and conditions of parole established by the board or by the
30 department of corrections and rehabilitation, the parolee must be returned to the
31 physical custody of the department of corrections and rehabilitation, transferred to

another correctional facility or the state hospital, or released from actual custody pursuant to such terms and conditions as may be established by the parole board or the department of corrections and rehabilitation, pending a final revocation hearing before the parole board. If the board determines at the final revocation hearing that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, it may order that the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve all or part of the remaining time of the sentence that has not been served in custody.

~~7.10.~~ At any hearing pursuant to this section a record must be made and the parolee shall have:

- a. Written notice of the purpose of the hearing and the alleged violations.
- b. The opportunity to be heard in person and present witnesses and documentary evidence.
- c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation would create a risk of harm to the witness.
- d. A written statement as to the reasons for the decision.

~~8.11.~~ When the board determines the parolee has absconded from supervision, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

12. After a parolee has completed twelve consecutive months on parole without a risk or revocation violation, the parole board may place the parolee on the diversion caseload as defined by the department of corrections and rehabilitation.

SECTION 7. AMENDMENT. Section 12.1-17-13 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-13. Mandated treatment of domestic violence offenders.

1. The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as defined in subsection 4 of section 14-07.1-01, must include an order to complete a

domestic violence offender treatment ~~batterers intervention~~ program. A court may not order the offender to attend anger management classes or individual counseling unless a domestic violence offender treatment program is not reasonably available to the defendant and the court makes findings for the record explaining why an order to complete a domestic violence offender treatment program would be inappropriate. The order must be included in the conditions of probation.

2. For purposes of this section and section 12.1-17-13.1, "batterers intervention program" means a program certified according to minimum standards set by the batterers intervention program standards oversight board as defined in this chapter.

SECTION 8. Section 12.1-17-13.1 of the North Dakota Century Code is created and enacted as follows:

12.1-17-13.1. Batterers intervention standards oversight board.

1. The batterers intervention standards oversight board consists of ten members:
 - a. The director of the department of corrections and rehabilitation, or a designee of the director;
 - b. Three representatives from the domestic violence advocacy programs in the state, appointed by the chief justice of the supreme court;
 - c. One local law enforcement official appointed by the attorney general;
 - d. The attorney general, or a designee of the attorney general;
 - e. A qualified elector of this state appointed by the governor;
 - f. The chief justice of the supreme court, or a designee of the chief justice;
 - g. The director of the state department of health, or a designee of the director; and
 - h. A presiding district court judge appointed by the chief justice of the supreme court.
2. Duties of the board:
 - a. The board shall establish minimum standards for a batterers intervention program, including:
 - (1) The duration of a batterers intervention program, which must be a minimum of forty contact hours over the course of twenty weeks;

(2) A requirement that a participant in the program must be personally responsible for any program fees, and that a certified program must accommodate varying levels of ability to pay; and

(3) A provision to provide reciprocity to any individual who has completed a similar program in another jurisdiction;

b. The board shall monitor and review each batterers intervention program to ensure compliance through periodic onsite inspections.

c. The board shall investigate and decide appeals, complaints, requests for variances, and post-enrollment certification applications. The board shall act upon a post-enrollment certification application within thirty days of submission of the application.

3. For purposes of this section, "post-enrollment certification application" means an application made to the board by an individual mandated to attend a certified batterers intervention program and who has enrolled in a program not certified by the board before adjudication.

SECTION 9. AMENDMENT. Section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-01. Classification of offenses - Penalties.

Offenses are divided into ~~seven~~eight classes, which are denominated and subject to maximum penalties and presumptive penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.

1 4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ten
2 thousand dollars, or both, may be imposed.

3 5. Class D felony, for which a maximum penalty of two years' imprisonment, a fine of five
4 thousand dollars, or both, may be imposed. If the conviction for a class D felony is the
5 defendant's first felony conviction and the class D offense is the most serious charge
6 associated with the conviction, the court shall impose a deferred imposition of
7 sentence for which a term of imprisonment may not be imposed unless at least one of
8 the factors described in subdivision a or b is present. The court may depart from a
9 sentence of probation or a deferred imposition for a first-time felony offender if the
10 judge states, at the time of sentencing and in the written order, the substantial and
11 compelling reasons for imposing an alternate sentence. The court shall impose a
12 maximum penalty of a period of probation or a fully suspended sentence of
13 incarceration unless at least one of the following factors is present:

14 a. The defendant is concurrently or consecutively sentenced to imprisonment for a
15 felony other than a class D felony.

16 b. There are substantial and compelling reasons why the defendant cannot be
17 supervised effectively and safely in the community.

18 6. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a
19 fine of three thousand dollars, or both, may be imposed. The court shall impose a
20 maximum penalty of a period of probation or a fully suspended sentence of
21 incarceration for a class A misdemeanor unless at least one of the factors in
22 subdivision a or b of subsection 5 is present. The court may depart from a sentence of
23 probation if the judge states, at the time of sentencing and in the written order, the
24 substantial and compelling reasons for imposing a sentence of incarceration.

25 ~~6.7.~~ Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a
26 fine of one thousand five hundred dollars, or both, may be imposed. The court shall
27 impose a maximum penalty of unsupervised probation or up to two hundred forty
28 hours of community service for a class B misdemeanor unless at least one of the
29 factors in subdivision a or b of subsection 5 is present. The court may depart from a
30 sentence of probation if the judge states, at the time of sentencing and in the written

1 order, the substantial and compelling reasons for imposing a sentence of
2 incarceration.

3 7.8. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any
4 person convicted of an infraction who has, within one year prior to commission of the
5 infraction of which the person was convicted, been previously convicted of an offense
6 classified as an infraction may be sentenced as though convicted of a class B
7 misdemeanor. If the prosecution contends that the infraction is punishable as a class B
8 misdemeanor, the complaint ~~shall~~must specify that the offense is a misdemeanor.

9 This section ~~shall not be construed to~~does not forbid sentencing under section 12.1-32-09,
10 relating to extended sentences.

11 **SECTION 10. AMENDMENT.** Section 12.1-32-03.1 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **12.1-32-03.1. Procedure for trial of infraction - Incidents.**

14 1. Except as provided in this subsection, all procedural provisions relating to the trial of
15 criminal cases as provided in the statutes or rules relating to criminal procedure shall
16 apply to the trial of a person charged with an infraction. A person charged with an
17 infraction is not entitled to be furnished counsel at public expense nor to have a trial by
18 jury unless the person may be subject to a sentence of imprisonment under
19 subsection 78 of section 12.1-32-01.

20 2. Except as provided in this title, all provisions of law and rules of criminal procedure
21 relating to misdemeanors ~~shall~~ apply to infractions, including, ~~but not limited to,~~ the
22 powers of law enforcement officers, the jurisdiction of courts, the periods for
23 commencing action and bringing a case to trial, and the burden of proof.

24 3. Following conviction of an infraction, the offender may be sentenced in accordance
25 with subsection 1 of section 12.1-32-02, except that a term of imprisonment may not
26 be imposed except in accordance with subsection 3 of section 12.1-32-05, or
27 subsection 78 of section 12.1-32-01.

28 4. If a statute provides that conduct is an infraction without specifically including a
29 requirement of culpability, no culpability is required.

30 **SECTION 11. AMENDMENT.** Subsection 2 of section 12.1-32-06.1 of the North Dakota
31 Century Code is amended and reenacted as follows:

2. Except as provided in this section, the length of supervised probation imposed in conjunction with a sentence of probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22; three years for ~~any other~~ a class AA, class A, class B, or class C felony offense; two years for a class D felony offense; one year for a class A misdemeanor; and three hundred sixty days for a class B misdemeanor offense from the later of the date of:
- The order imposing probation;
 - The defendant's release from incarceration; or
 - Termination of the defendant's parole.

SECTION 12. AMENDMENT. Section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.

- When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant,

1 including monitoring and enforcement of terms and conditions of probation set by the
2 court.

3 2. The conditions of probation must be such as the court in its discretion deems
4 reasonably necessary to ensure that the defendant will lead a law-abiding life or to
5 assist the defendant to do so. The court shall provide as an explicit condition of every
6 probation that the defendant not commit another offense during the period for which
7 the probation remains subject to revocation. The court shall order supervision costs
8 and fees of not less than fifty-five dollars per month unless the court makes a specific
9 finding on record that the imposition of fees will result in an undue hardship. If the
10 offender has not paid the full amount of supervision fees and costs before completion
11 or termination of probation, the court may issue an order, after opportunity for hearing,
12 to determine the amount of supervision fees and costs that are unpaid. The order may
13 be filed, transcribed, and enforced by the department of corrections and rehabilitation
14 in the same manner as civil judgments rendered by a district court of this state.

15 3. The court shall provide as an explicit condition of every probation that the defendant
16 may not possess a firearm, destructive device, or other dangerous weapon while the
17 defendant is on probation. Except when the offense is a misdemeanor offense under
18 section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the
19 court may waive this condition of probation if the defendant has pled guilty to, or has
20 been found guilty of, a misdemeanor or infraction offense, the misdemeanor or
21 infraction is the defendant's first offense, and the court has made a specific finding on
22 the record before imposition of a sentence or a probation that there is good cause to
23 waive the condition. The court may not waive this condition of probation if the court
24 places the defendant under the supervision and management of the department of
25 corrections and rehabilitation. The court shall provide as an explicit condition of
26 probation that the defendant may not willfully defraud a urine test administered as a
27 condition of probation. Unless waived on the record by the court, the court shall also
28 provide as a condition of probation that the defendant undergo various agreed-to
29 community constraints and conditions as intermediate measures of the department of
30 corrections and rehabilitation to avoid revocation, which may include:

31 a. Community service;

- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program;
- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
- j. Participation in the twenty-four seven sobriety program.

4. Violations of probation are divided into three classes:

- a. A "compliance violation" means any violation of a condition of supervision which is not a risk violation or revocation violation and may be sanctioned by:
 - (1) Extension of the period of supervision within the period provided by law;
 - (2) Additional reporting and compliance requirements;
 - (3) Testing for the use of drugs and alcohol;
 - (4) If ordered by the court, counseling and treatment for emotional or other mental health problems, including substance abuse; or
 - (5) Other community constraints and conditions as provided in this chapter.
- b. A "risk violation" means arrest for absconding or arrest for a new felony or misdemeanor offense other than a revocation violation offense, or the sixth or subsequent individually sanctioned compliance violation and may be sanctioned by:
 - (1) Up to thirty days confinement; or
 - (2) Any sanction provided as a condition of probation.
- c. A "revocation violation" means an arrest for a violent felony offense or a violation of a protective order and may be sanctioned by:
 - (1) An order for revocation of probation; or
 - (2) Any sanction described in this section.

- 1 5. Parole and probation officers may administer any community constraint or condition
2 provided under subsection 3. An officer shall obtain judicial approval before any period
3 of confinement of more than forty-eight hours may be imposed.
- 4 6. A county jail must accept and hold any probationer sanctioned to incarceration if the
5 county jail has bed space available.
- 6 7. Any intermediate measure or incentive must be applied in accordance with a matrix of
7 behaviors and corresponding responses developed by the department of corrections
8 and rehabilitation.
- 9 8. A petition for revocation must include documentation of any violation and any
10 response to a violation imposed by the department of corrections and rehabilitation.
- 11 9. When imposing a sentence to probation, probation in conjunction with imprisonment,
12 probation in conjunction with suspended execution or deferred imposition of
13 sentence, the court may impose such conditions as it deems appropriate and may
14 include any one or more of the following:
 - 15 a. Work faithfully at a suitable employment or faithfully pursue a course of study or
16 of career and technical education training that will equip the defendant for
17 suitable employment.
 - 18 b. Undergo available medical or psychiatric treatment and remain in a specified
19 institution if required for that purpose.
 - 20 c. Attend or reside in a facility established for the instruction, recreation, or
21 residence of persons on probation.
 - 22 d. Support the defendant's dependents and meet other family responsibilities.
 - 23 e. Make restitution or reparation to the victim of the defendant's conduct for the
24 damage or injury which was sustained or perform other reasonable assigned
25 work. When restitution, reparation, or assigned work is a condition of probation,
26 the court shall proceed as provided in subsection 1 or 2, as applicable, of section
27 12.1-32-08.
 - 28 f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
 - 29 g. Refrain from excessive use of alcohol or any use of narcotics or of another
30 dangerous or abusable drug without a prescription.

- 1 h. Permit the probation officer to visit the defendant at reasonable times at the
2 defendant's home or elsewhere.
- 3 i. Remain within the jurisdiction of the court, unless granted permission to leave by
4 the court or the probation officer.
- 5 j. Answer all reasonable inquiries by the probation officer and promptly notify the
6 probation officer of any change in address or employment.
- 7 k. Report to a probation officer at reasonable times as directed by the court or the
8 probation officer.
- 9 l. Submit to a medical examination or other reasonable testing for the purpose of
10 determining the defendant's use of narcotics, marijuana, or other controlled
11 substance whenever required by a probation officer.
- 12 m. Refrain from associating with known users or traffickers in narcotics, marijuana,
13 or other controlled substances.
- 14 n. Submit the defendant's person, place of residence, or vehicle to search and
15 seizure by a probation officer at any time of the day or night, with or without a
16 search warrant.
- 17 o. Serve a term of imprisonment of up to one-half of the maximum term authorized
18 for the offense of which the defendant was convicted.
- 19 p. Reimburse the costs and expenses determined necessary for the defendant's
20 adequate defense when counsel is appointed or provided at public expense for
21 the defendant. When reimbursement of indigent defense costs and expenses is
22 imposed as a condition of probation, the court shall proceed as provided in
23 subsection 4 of section 12.1-32-08.
- 24 q. Provide community service for the number of hours designated by the court.
- 25 r. Refrain from any subscription to, access to, or use of the internet.
- 26 ~~5.10.~~ When the court imposes a sentence to probation, probation in conjunction with
27 imprisonment, or probation in conjunction with suspended execution or deferred
28 imposition of sentence, the defendant must be given a certificate explicitly setting forth
29 the conditions on which the defendant is being released.
- 30 ~~6.11.~~ The court, upon notice to the probationer and with good cause, may modify or enlarge
31 the conditions of probation at any time prior to the expiration or termination of the

period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.

~~7.12.~~ The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.

~~8.13.~~ Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.

~~9.14.~~ Notwithstanding any other provision of law, the court may authorize the defendant to assist law enforcement officers in an investigation of a criminal offense upon the terms and conditions as the court may require by written order. The court shall hold a hearing in camera before issuing an order under this subsection. The order must be sealed and is subject to inspection only upon order of the court.

SECTION 13. Subsections 3 and 4 to section 12.1-32-07.1 of the North Dakota Century Code are created and enacted as follows:

3. A defendant is eligible for a presumptive termination of probation after a period of twelve consecutive months on probation or a cumulative period of twelve months of parole and probation without a risk revocation as defined in section 12.1-32-07. This subsection does not apply to a defendant on probation for an offense under section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any

domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22. A defendant with any outstanding fine, fee, or restitution order is not eligible for early termination, but may be placed on the lowest level of supervision for the remainder of the payment schedule.

4. A probation officer shall file a petition on behalf of the defendant and the court shall hold a status hearing to review the defendant's probation history when a defendant is eligible for presumptive termination and discharge. The court shall approve an automatic discharge from probation upon the defendant's completion of a period of three months on the diversion caseload, except the court may depart from the presumptive termination if the judge states on the record the reason for denying the termination of supervision.

SECTION 14. AMENDMENT. Subdivision c of subsection 4 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

- c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 6~~11~~ or 7~~12~~, as applicable, of section 12.1-32-07.

SECTION 15. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. Sentencing of violent offenders.

1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.
2. A sentence of incarceration for a violent offender under subsection 1 must include a period of supervision of at least one year following release.

1 3. In the case of an offender who is sentenced to a term of life imprisonment with
2 opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence
3 imposed" means the remaining life expectancy of the offender on the date of
4 sentencing. The remaining life expectancy of the offender must be calculated on the
5 date of sentencing, computed by reference to a recognized mortality table as
6 established by rule by the supreme court.

7 ~~3.4.~~ Notwithstanding this section, an offender sentenced under subsection 1 of section
8 12.1-32-01 may not be eligible for parole until the requirements of that subsection
9 have been met.

10 **SECTION 16. AMENDMENT.** Section 12.1-32-14 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **12.1-32-14. Restoration of property or other work to be required of certain offenders.**

13 Other provisions of this chapter notwithstanding, whenever ~~a person~~ an individual convicted
14 of criminal mischief is placed on probation pursuant to section 12.1-32-02 or 12.1-32-07, the
15 court shall include as a condition of that probation the requirement that the ~~person~~ individual
16 perform restoration or other assigned work as specified in subdivision e of subsection ~~49~~ of
17 section 12.1-32-07.

18 **SECTION 17. AMENDMENT.** Section 12.1-32-16 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **12.1-32-16. Restitution to be required of certain offenders - Penalty.**

21 Notwithstanding any other provision in this chapter, whenever ~~a person~~ an individual whose
22 license has been suspended for nonpayment of child support under section 50-09-08.6 is
23 convicted of engaging in activity for which the license was required, the court shall require as a
24 condition of the sentence that the ~~person~~ individual pay restitution in the amount of two hundred
25 fifty dollars, or a higher amount set by the court, as specified in subdivision e of subsection ~~49~~
26 of section 12.1-32-07. Any restitution ordered under this section must be paid to the state
27 disbursement unit for distribution under section 14-09-25.

28 **SECTION 18. AMENDMENT.** Section 39-24.1-07 of the North Dakota Century Code is
29 amended and reenacted as follows:

39-24.1-07. Criminal penalties for operating snowmobile while having alcohol or drug concentrations.

Upon conviction of a violation of subdivision c of subsection 5 of section 39-24-09, the court shall impose the following minimum penalties:

1. Notwithstanding subsection ~~78~~ of section 12.1-32-01, if the ~~person's~~individual's record indicates that, within the five years preceding the date of the offense, the ~~person~~individual has not violated subdivision c of subsection 5 of section 39-24-09 or the ~~person~~individual has not been prohibited from operating a snowmobile under this chapter, the offense is an infraction. The court shall impose a minimum fine of two hundred fifty dollars and, as a condition of that ~~person's~~individual's probation, shall prohibit that ~~person~~individual from operating a snowmobile on all public land or private land with public access for sixty days within the snowmobile season that runs from December first through April first.
2. If the ~~person's~~individual's record indicates that, within the five years preceding the date of the offense, the ~~person~~individual has one violation of subdivision c of subsection 5 of section 39-24-09 or the ~~person~~individual has once been prohibited from operating a snowmobile under this chapter, the offense is a class B misdemeanor. The court shall impose a minimum fine of three hundred fifty dollars and, as a condition of that ~~person's~~individual's probation, shall prohibit that ~~person~~individual from operating a snowmobile on all public land or private land with public access for one year from the date of the sentence.
3. If the ~~person's~~individual's record indicates that, within the five years preceding the date of the offense, the ~~person~~individual has had at least two violations of subdivision c of subsection 5 of section 39-24-09 or the ~~person~~individual has at least twice been prohibited from operating a snowmobile under this chapter, the offense is a class B misdemeanor. The court shall impose a minimum fine of four hundred fifty dollars and, as a condition of that ~~person's~~individual's probation, shall prohibit that ~~person~~individual from operating a snowmobile on all public land or private land with public access for two years from the date of the sentence.

SECTION 19. AMENDMENT. Subsection 17 of section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

1 17. To act as the official agency of the state in the administration of the supplemental
2 nutrition assistance program and to direct and supervise county administration of that
3 program. Provided, however, that the department with the consent of the budget
4 section of the legislative management may terminate the program if the rate of federal
5 financial participation in administrative costs provided under Public Law 93-347 is
6 decreased or limited, or if the state or counties become financially responsible for all or
7 a portion of the coupon bonus payments under the Food Stamp Act. ~~Unless at least~~
8 ~~seven years has elapsed since the most recent felony conviction that has as an~~
9 ~~element the possession, use, or distribution of a controlled substance, the department~~
10 ~~shall deny assistance under the supplemental nutrition assistance program to any~~
11 ~~individual who has been convicted of a felony offense that has as an element the~~
12 ~~possession, use, or distribution of a controlled substance as defined in section 102(6)-~~
13 ~~of the Controlled Substances Act [21 U.S.C. 802(6)].~~

14 **SECTION 20.** Subsection 18 to section 54-23.3-04 of the North Dakota Century Code is
15 created and enacted as follows:

16 18. To develop and maintain a risk assessment tool that must be validated at least every
17 four years. Before June first of even-numbered years, the director shall prepare and
18 submit a report to the legislative management on data relating to the risk assessment
19 tool and the impact on subpopulations, such as gender, race, and ethnicity.

20 **SECTION 21. AMENDMENT.** Subdivision a of subsection 7 of section 54-23.4-01 of the
21 North Dakota Century Code is amended and reenacted as follows:

22 a. "Allowable expense" means reasonable charges incurred for reasonably needed
23 products, services, and accommodations required to participate in criminal justice
24 proceedings, to attend a funeral, or for appointments due to the injury, including
25 those for medical care, rehabilitation, rehabilitative occupational training, and
26 other remedial treatment and care. The term includes a total charge not in excess
27 of ~~five~~seven thousand five hundred dollars for expenses in any way related to
28 funeral, cremation, and burial. ~~The term does not include that portion of a charge~~
29 ~~for a room in a hospital, clinic, convalescent or nursing home, or any other~~
30 ~~institution engaged in providing nursing care and related services, in excess of a~~

1 reasonable and customary charge for semiprivate accommodations, unless the
2 excess represents costs of other accommodations that are medically required.

3 **SECTION 22. AMENDMENT.** Section 54-23.4-06 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-23.4-06. Application for compensation - Awards - Limitations on awards.**

- 6 1. An applicant for an award of compensation shall apply in writing in a form that
7 conforms substantially to that prescribed by the division. If a resident of this state is a
8 victim of criminally injurious conduct, but the criminally injurious conduct occurred
9 outside the geographical boundaries of this state, the resident has the same rights
10 under this chapter as if the criminally injurious conduct occurred within this state upon
11 a showing that the state, territory, country, or political subdivision of the country in
12 which the criminally injurious conduct occurred does not have a crime victims
13 compensation law which covers the bodily injury or death of the victim.
- 14 2. A claim for compensation must be filed within ~~one year~~two years from the date the
15 criminally injurious conduct was reported to a law enforcement officer. The division
16 may extend the time for filing if it determines that the interests of justice so require.
17 ~~There is no appeal from a decision of the division not to extend the filing time, not to~~
18 ~~reopen, or not to reinvestigate a claim.~~A decision to extend the time of filing may be
19 appealed under section 54-23.4-15.
- 20 3. Compensation may not be awarded to a claimant who is the offender or an accomplice
21 of the offender, nor to any claimant if the award would unjustly benefit the offender or
22 an accomplice.
- 23 4. Compensation may not be awarded unless the criminally injurious conduct resulting in
24 injury or death was reported to a law enforcement officer within ninety-six hours after
25 its occurrence or the division finds there was good cause for the failure to report within
26 that time. In the case of child abuse or sexual molestation of a child, the criminally
27 injurious conduct must be reported to a law enforcement officer within three years after
28 the child reaches the age of majority.
- 29 5. The division, upon finding that the claimant has not fully cooperated with appropriate
30 law enforcement agencies, may deny, reconsider, or reduce an award of
31 compensation.

- 1 6. Compensation otherwise payable to a claimant must be reduced or denied:
 - 2 a. To the extent the economic loss upon which the claim is based is recouped from
 - 3 other persons, including collateral sources; and
 - 4 b. To the extent the division deems reasonable because of the contributory
 - 5 misconduct of the claimant or of a victim on whose behalf compensation is
 - 6 claimed; ~~and~~
 - 7 c. ~~To the extent the division deems reasonable when it is determined that a victim~~
 - 8 ~~was under the influence of an alcoholic beverage or a controlled substance at the~~
 - 9 ~~time the criminally injurious conduct occurred and the victim's intoxication was a~~
 - 10 ~~factor causing the criminally injurious conduct.~~
- 11 7. Compensation for work loss, replacement services loss, dependent's economic loss,
- 12 and dependent's replacement services loss may not exceed three hundred dollars per
- 13 week.
- 14 8. Compensation payable to a victim and to all other claimants sustaining economic loss
- 15 because of injury to or death of that victim may not exceed twenty-five thousand
- 16 dollars in the aggregate. If a resident of this state is the victim of criminally injurious
- 17 conduct outside the geographical boundaries of this state and the total amount of
- 18 crime victims compensation benefits payable where the criminally injurious conduct
- 19 occurred is less than twenty-five thousand dollars, the division may pay additional
- 20 compensation to the victim. The maximum additional compensation the division may
- 21 pay is the difference between twenty-five thousand dollars and the total amount of
- 22 crime victims compensation benefits payable where the criminally injurious conduct
- 23 occurred.
- 24 9. Compensation payable to a victim for property loss related to crime scene cleanup
- 25 may not exceed two thousand five hundred dollars.
- 26 10. Compensation payable to a victim for loss of property to replace locks, windows, and
- 27 other residential security items at a victim's residence or at the residential scene of a
- 28 crime may not exceed five hundred dollars per residence.
- 29 11. Compensation for reasonable expenses incurred by a victim or by a victim service
- 30 program on behalf of a victim for up to three months of housing assistance may not
- 31 exceed a cumulative lifetime maximum of two thousand dollars per person.

1 **SECTION 23. REPEAL.** Section 12-59-22 of the North Dakota Century Code is repealed.

2 **SECTION 24. PRETRIAL SERVICES DIVISION PILOT PROJECT - REPORT TO**

3 **LEGISLATIVE ASSEMBLY.** The department of corrections and rehabilitation may establish a
4 pretrial services program as a pilot project in one or more judicial districts during the biennium
5 beginning July 1, 2017, and ending June 30, 2019. The pretrial services pilot project must
6 involve coordination among the department, the judicial branch, and state and local law
7 enforcement agencies for the provision of pretrial services by the department for the district
8 courts to individuals charged with felony offenses. Pretrial services include risk assessments,
9 background and criminal history background investigations, recommendations for conditions of
10 pretrial release, monitoring and supervision of individuals on pretrial release for compliance with
11 pretrial conditions to assure the individual's appearance at all court proceedings, and reporting
12 violations of pretrial release conditions to the district court. The department and the judicial
13 branch shall provide a report of the process and outcome measures of the pretrial services
14 program and recommendations, together with any legislation required to implement the
15 recommendations, to the sixty-sixth legislative assembly.

Justice Reinvestment in North Dakota

*Fourth Presentation to the Incarceration Issues Committee:
Policy Recommendations*

July 25, 2016

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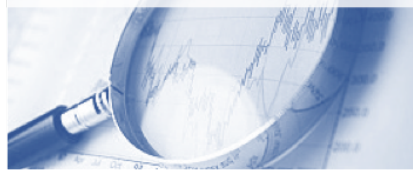


The Council of State Governments Justice Center

Corrections



Justice Reinvestment



Mental Health



Reentry



Substance Abuse



Youth



Courts



Law Enforcement



National nonprofit, nonpartisan membership association of state government officials that engages members of **all three branches** of state government.

JUSTICE ★ **CENTER**
THE COUNCIL OF STATE GOVERNMENTS

The Justice Center provides **practical, nonpartisan advice** informed by the best available evidence.

What is Justice Reinvestment?



JUSTICE REINVESTMENT

A data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease recidivism and increase public safety

The Justice Reinvestment Initiative is supported by funding from the **U.S. Department of Justice's Bureau of Justice Assistance (BJA)** and **The Pew Charitable Trusts**

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Policies to Reduce Recidivism by
Strengthening Community Supervision

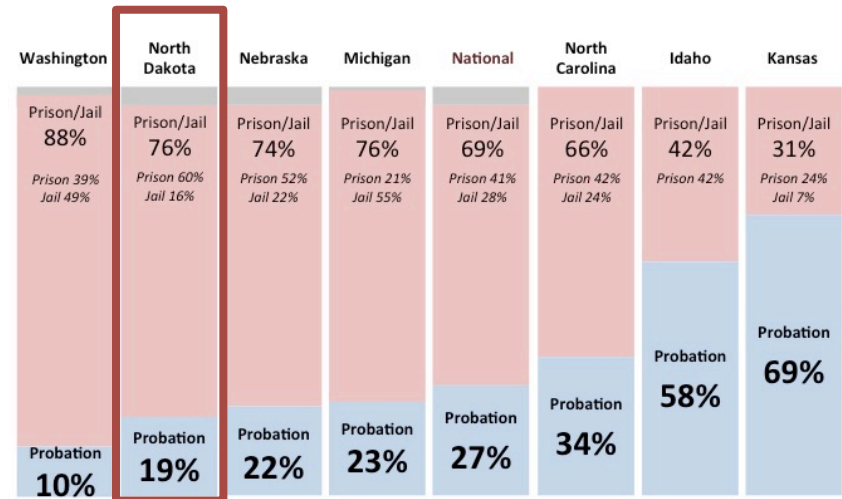
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Nest Steps



North Dakota relies more heavily on incarceration for lower-level felonies than most states

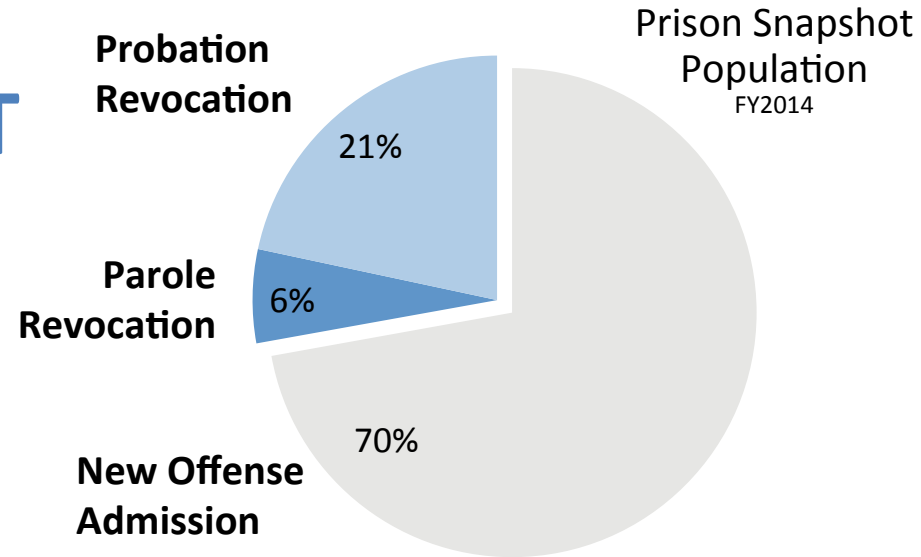
In FY2014, just **19 PERCENT** of felony sentences were to probation. In other states, this rate is higher: nationally, it is 27 percent; in Idaho, 58 percent, and in Kansas, 69 percent.



The majority of people sentenced for offenses under the lowest felony class (Class C) receive sentences to prison, where their average length of stay is 10 months, a costly sanction that provides limited options for programs that can lower recidivism. Sentencing people convicted of a Class C offense to probation, however, enables a sentence of up to 5 years that provides longer periods of accountability and monitoring. Probationers can receive treatment as needed, be sanctioned for failure to comply with conditions, and be revoked and sentenced to prison.

Individuals failing on community supervision put significant pressure on county and state facilities.

On any given day, **27 PERCENT** of North Dakota's prison beds are occupied by people who were on probation and parole supervision prior to being revoked and required to serve a term in prison.

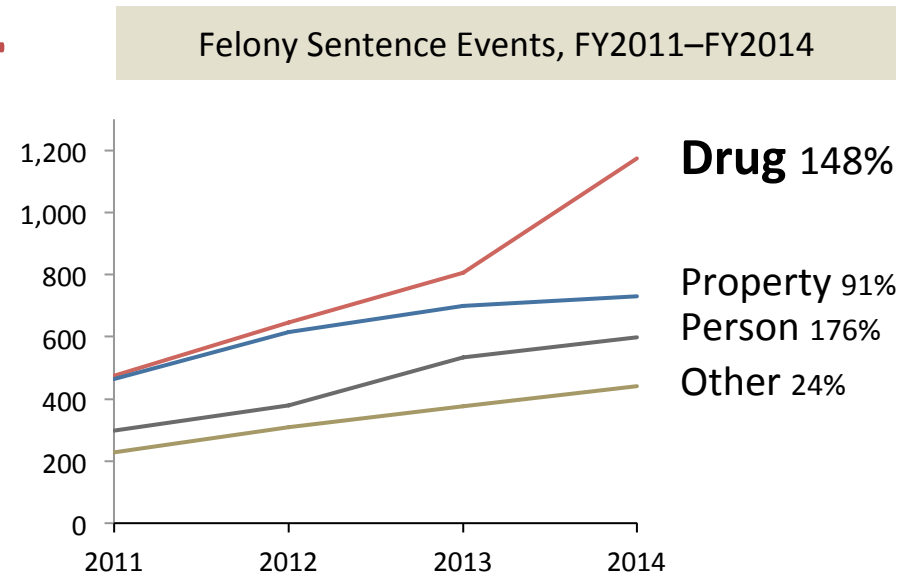


Probation and parole revocations impose substantial costs for county governments as well: 33 percent of people revoked from probation are required to serve terms in jail. 45 percent of revocations from probation involved no new criminal offenses; the probationer violated the conditions of his or her supervision. In surveys, probation and parole officers indicated they are seeking additional tools—sanctions, incentives, and treatment where needed—to hold probationers and parolees accountable.

THIRD CRIMINAL JUSTICE SYSTEM CHALLENGE

There is a substantial need for substance use treatment, and barriers exist to accessing adequate care

POs believe that **75 PERCENT** of people on probation or parole have a need for substance use treatment, and probation and parole officers indicate long wait periods to access behavioral health treatment.



A shortage of behavioral health treatment is a factor underpinning many of North Dakota's criminal justice challenges. This issue has been raised by numerous criminal justice system stakeholders, including local law enforcement, prosecutors, judges, and defense attorneys. Over a three-year period, from 2011 to 2014, the number of felony sentences for drug offenses increased two-and-a-half times. In 2014, four out of five felony drug sentences were for possession.

Maintaining the status quo will cost North Dakota a minimum of \$485 million in additional spending over the next decade

Ten-year cost of relying on contracted capacity to accommodate projected prison growth

Current contract beds (530)
carried forward through 2025 **\$220M**

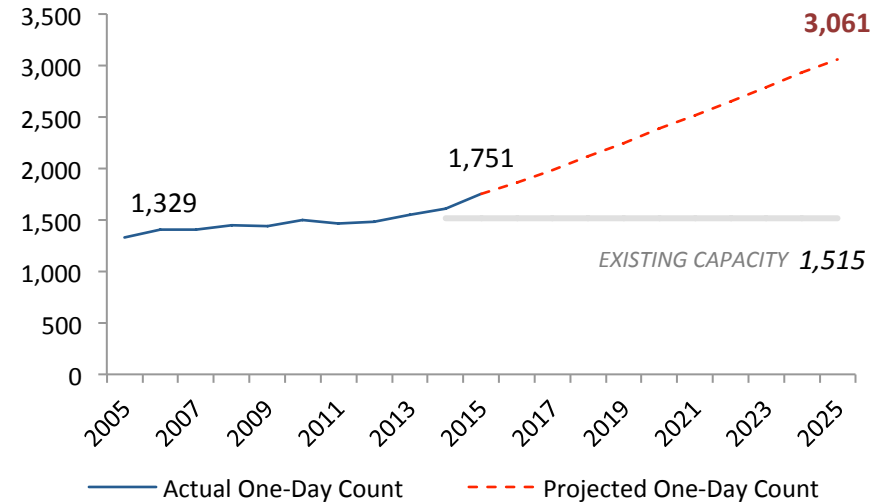
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Population growth (1,310)
carried through 2025 **\$265M**

=

Total Estimated Cost of Accommodating Prison Growth Through Contract Beds **\$485M**
daily rate estimate is \$114/day

HISTORICAL AND PROJECTED ONE-DAY TOTAL INMATE COUNTS, FY2005–2025



Building a **NEW STATE PRISON** would add costs above the contract beds

OUT-OF-STATE CONTRACT BEDS likely would be needed, possibly increasing collateral costs

Contract beds within the state of North Dakota are **NOT ADEQUATELY EQUIPPED** to handle inmates' special needs

CSG Justice Center staff are pursuing regional perspectives in stakeholder engagement, reflecting the state's size and diversity

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CALLS & MEETINGS

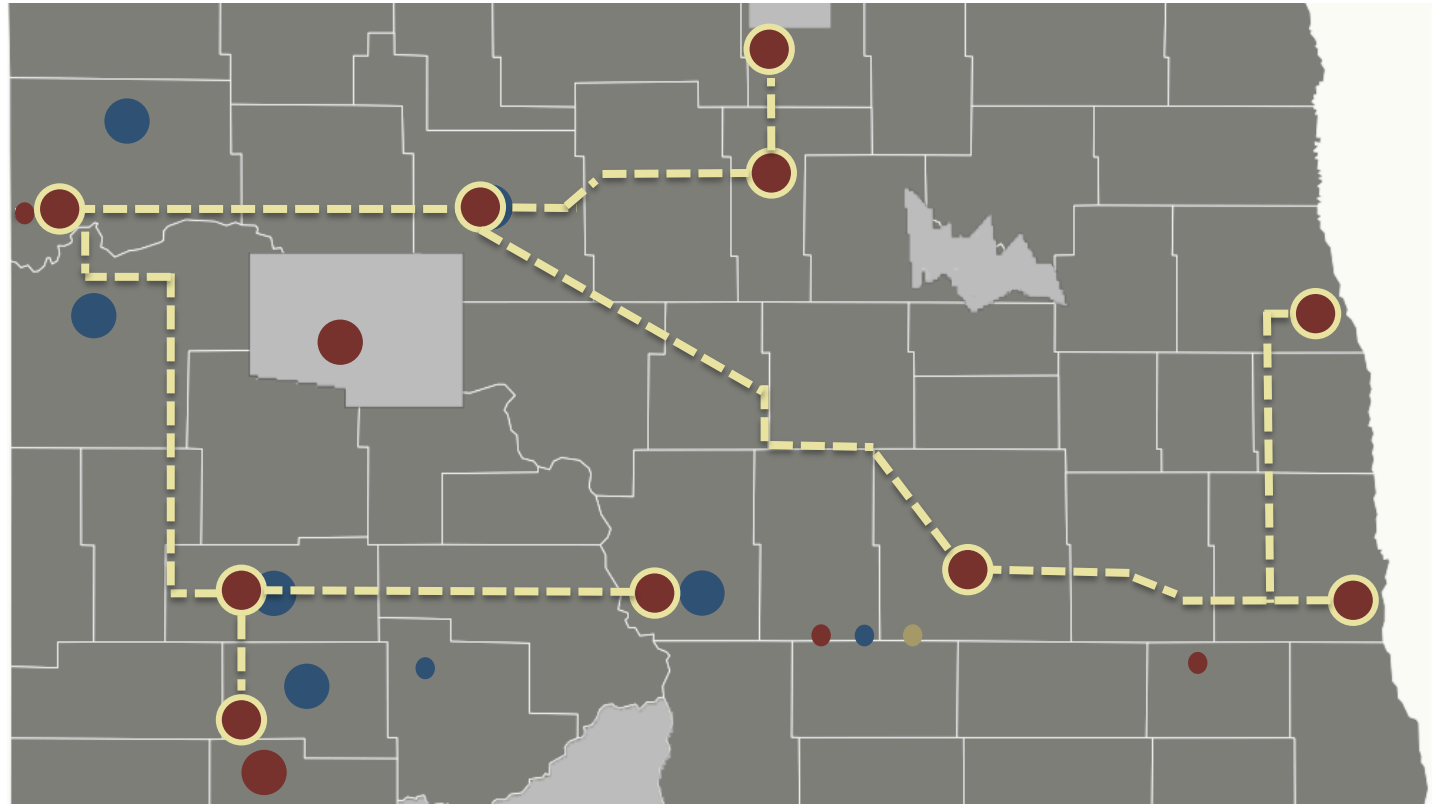
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ON-SITE VISITS

10

DIFFERENT REGIONS

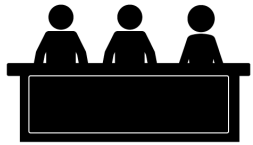
SINCE FALL 2015



**Statewide
Surveys**

District Court judges and Probation and Parole Officers participated in online CSG Justice Center staff surveys. 62 percent of district court judges responded, and 71 percent of probation and parole officers responded.

Stakeholder input informs the data analysis presented today



Incarceration Issues Committee

Individual meetings/calls with working group members and their staff



Corrections

Meetings with DOCR staff, Centre Inc., and the Dakota Women's Correctional Rehab Center; probation officers survey; and observation of probation reporting sessions



North Dakota Legislature

Meetings with Senators and House Representatives



Behavioral Health

DHS, Regional Human Services Centers, Ruth Meiers Hospitality Center, ADAPT Inc., Heartview Foundation, Heart River Alcohol and Drug Abuse Services, Native American Resource Center, and Choice Recovery Counseling



Courts

Meetings/calls with individual judges, state attorneys, and the Attorney General's Office; administration of a judicial survey; and court observations



Law Enforcement

Burleigh, Ward, and Cass County Police Department; Bismarck and Minot Police Department; Rolette, Bottineau, Pierce, Stark, and Williams County Sheriff's Office; Southwest Multi Correction Center; and presented at the joint Chiefs and Sheriffs Associations meeting



Community and Tribal Organizations

Turtle Mountain Tribal Council, NDACo, Indian Affairs Commission, Three Affiliated Tribes, CAWS North Dakota, North Dakota Council on Abused Women Services Coalition, and North Dakota Board of Addiction Counseling Services

OVERVIEW

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03 Policies to Support Victims of Crime

04 Policies to Avert Growth in Prison Populations and Corrections Costs

05 Policies to Reduce Recidivism by Strengthening Community Supervision

06 Nest Steps



Justice reinvestment goals explored in today's presentations

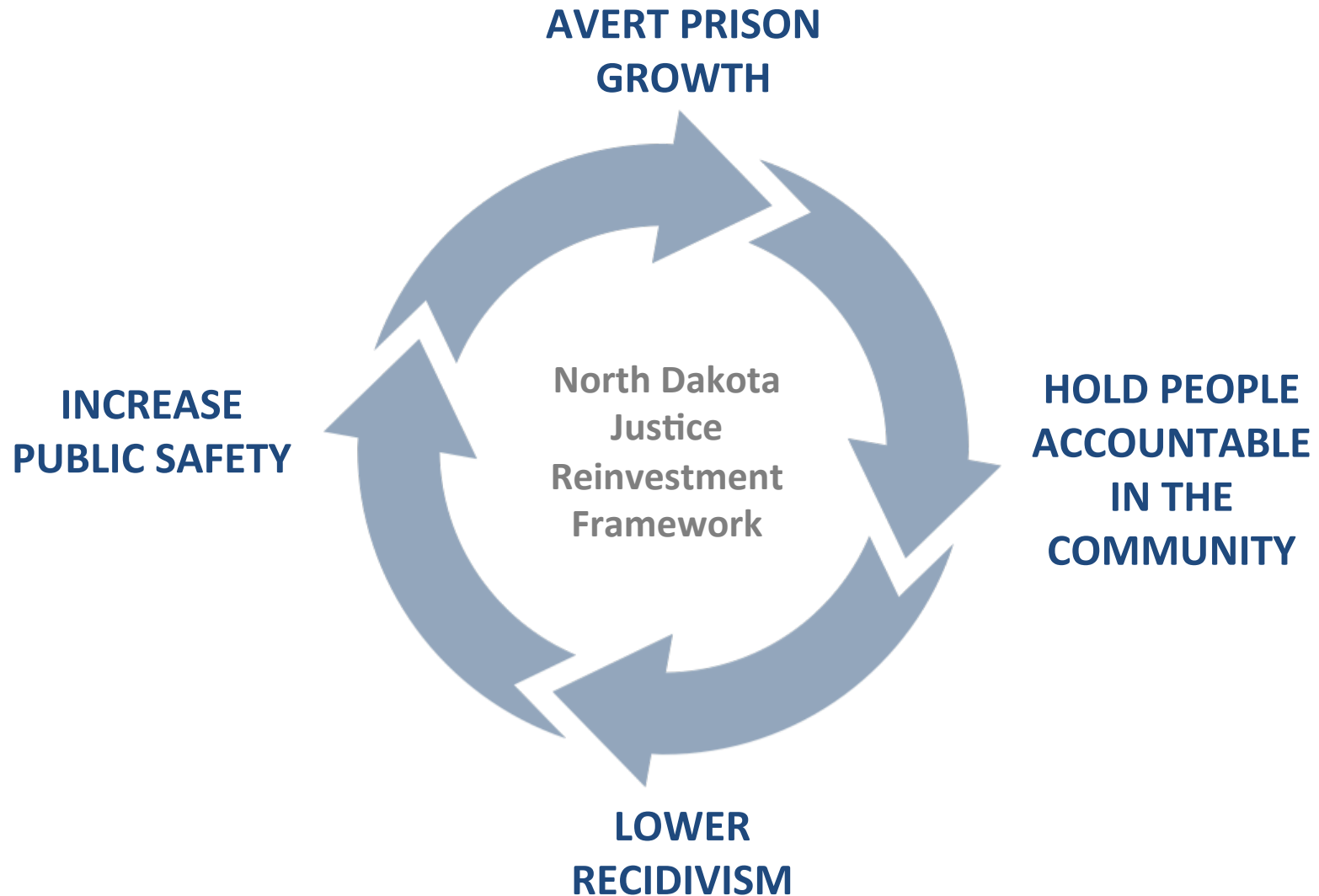
Avoid hundreds of millions in corrections spending

Improve services and resources for victims of crime

Reduce recidivism with stronger supervision

Expand access to high quality programs and treatment

The core tenants of justice reinvestment are interconnected and build upon one another to create an impact



Content of today's presentation

- Is the **first draft** of an eventual policy package. There will be several more iterations before the bill is finalized for submissions.
- The purpose of the presentation and today's bill draft is to spark discussion and to work toward **consensus on ideas to move forward**.
- Not all ideas discussed to date are included in today's content. **Additional material** will be brought forward at the September meeting.
- It is likely that not all ideas included in today's presentation or bill draft will be included in the final **bill filed in October**.
- The goal of today's presentation is to discuss the **ideas and intent** of the proposed policies. Individual meetings will be set to **review specific language** contained in the bill draft.
- Cost aversion and **impact estimates** will be provided at the next meeting.

Content of today's presentation

- You may notice discrepancies between the bill draft distributed today and ideas presented in these slides. Conversations with a number of stakeholders shaped these policy ideas, and some **changes were made** while the official bill draft was processing in the North Dakota system.
- Ideas presented in **these slides are more current** than language in the bill draft.
- We will be **speaking with each member** about of the Incarceration Issues Committee to discuss these details more in depth.

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Populations and Corrections Costs

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Strengthening Community Supervision

06 Nest Steps



More than 30 North Dakota victim advocates have participated in the justice reinvestment process

ORGANIZATIONS ENGAGED:

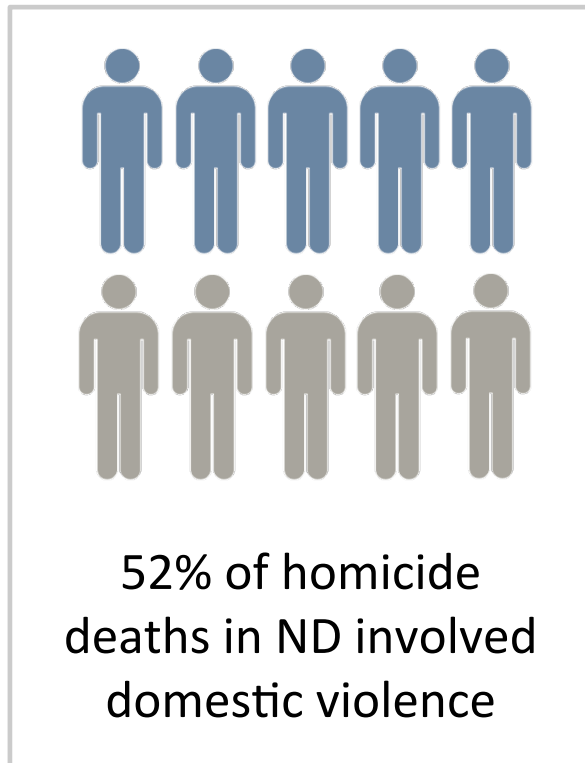
- Domestic Violence and Sexual Assault Program Directors and Advocates from Beulah, Washburn, Dickinson, Jamestown, Bismarck, Grand Forks, Minot and Bottineau, and Grafton
- Member of the Batterers Treatment Forum
- CAWS North Dakota
- FBI Victim Advocate
- First Nations Womens Alliance
- Crime Victim Compensation
- CJIS/SAVIN Staff

Key ways to support victims of crime

POLICY OPTION #1: Create stronger protections for survivors of domestic violence and help promote reform and recovery for batterers

Domestic violence presents a significant threat to public safety

Between 1992 and 2014, 136 people were murdered in North Dakota during incidents of domestic violence. The North Dakota Domestic Violence Fatality Review Commission reviewed these incidents and found several common factors:



- One or both parties had a **history of prior domestic violence incidents**; the majority of those incidents resulted in involvement with law enforcement and the criminal justice system.
- One or both parties had a **history of alcohol or substance abuse** sometimes in conjunction with a history of treatment for mental illness or a chronic health condition.

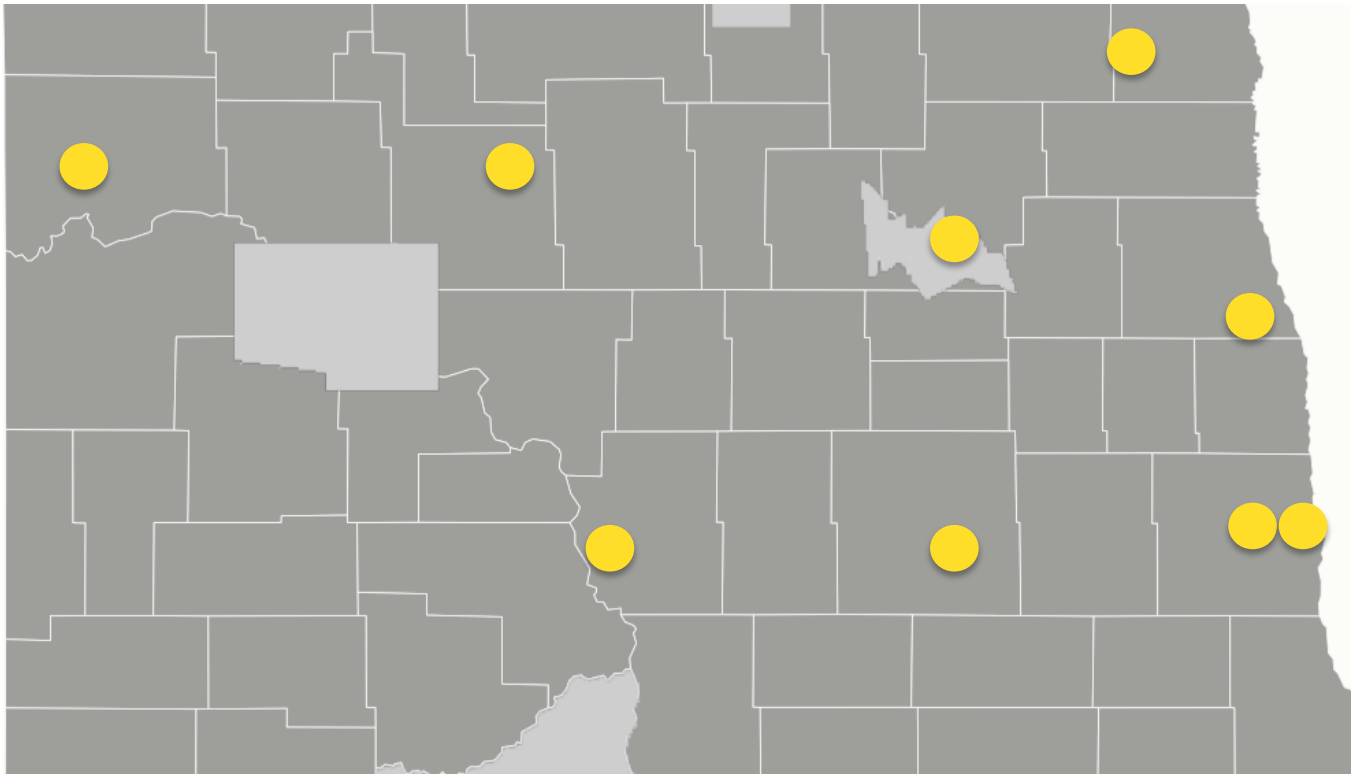
Ensure supervision for people committing crimes against persons

1A. Require that all defendants with pending charges related to domestic violence undergo a pretrial risk assessment, including a **lethality assessment**, to inform decisions to detain or release before trial. *This policy plank has not yet be incorporated into legislation or court rule.*

1B. Require that sentences for offenses defined as domestic violence include a **period of probation**, even for misdemeanor offenses. *This policy plank has not yet be incorporated into legislation or court rule.*

POLICY OPTION #1

There are 9 Batterer's Treatment Programs across the state that work within the minimum guidelines for programming

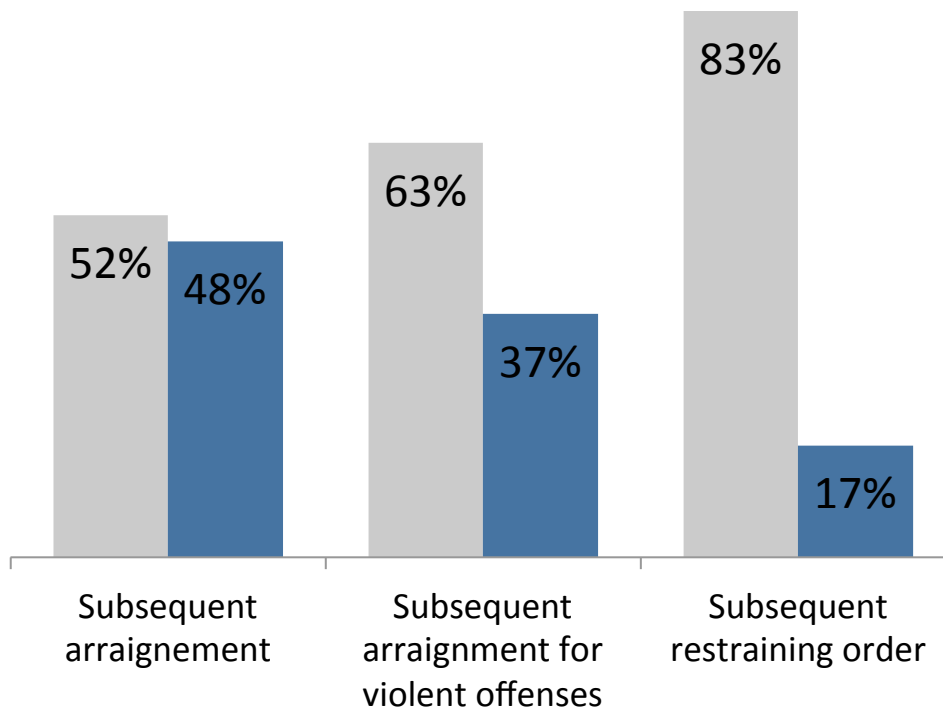


Not all programming submitted to the courts follows the Adult Batterers Treatment Standards of North Dakota; someone ordered to complete treatment may attend a 26 week course or they may complete a significantly shorter, online course.

There is no reassurance to courts that the programming received by a defendant is effective

**OUTCOMES FOR DEFENDANTS WHO PARTICIPATED
IN BIP VERSUS THOSE WHO DID NOT***

BIP PARTICIPANTS ■ OTHER DV DEFENDANTS ■

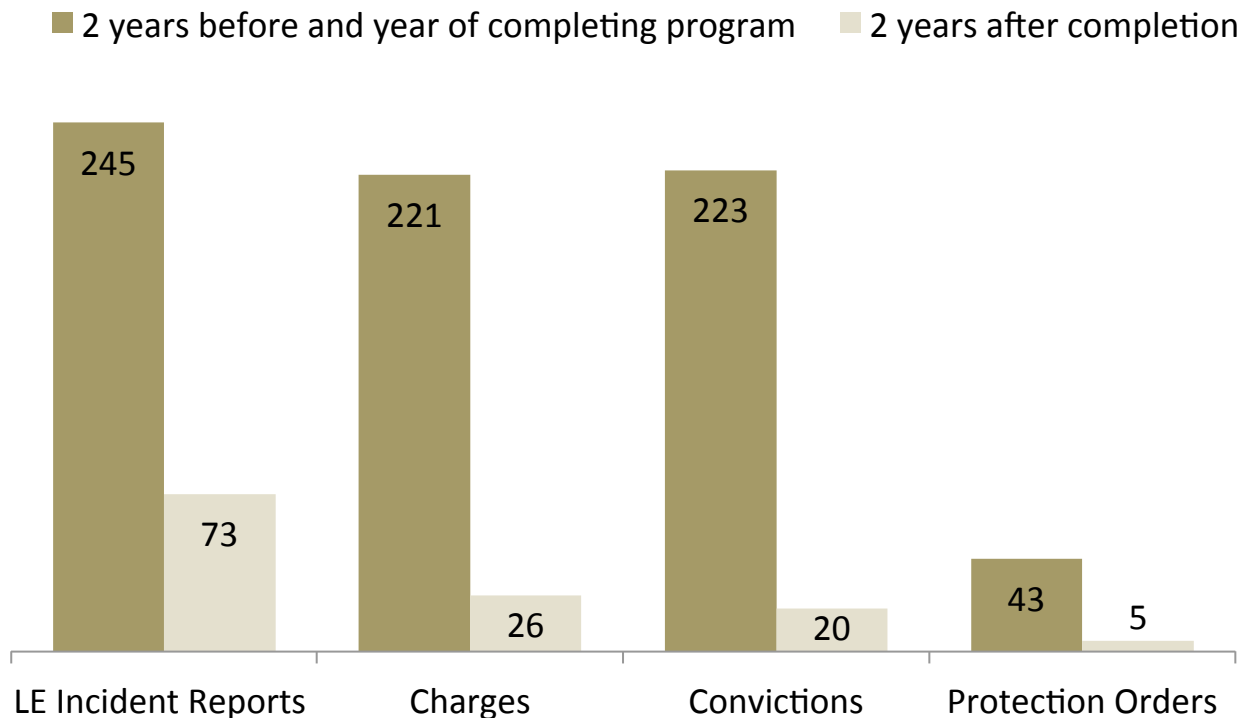


Both batterers treatment and anger management are currently included in sentences for domestic violence offenses.

Batterer's intervention programs (BIP) have been shown to reduce harm at greater rates than anger management programs.

Local jurisdictions saw 70 percent or more reduction in criminal justice system involvement after individuals completed BIP

LAW ENFORCEMENT AND COURT ACTIVITY FOR OFFENDERS WHO COMPLETED NEW CHOICES BETWEEN 2004 and 2013



Grand Forks tracked the outcomes of 294 participants in their Batterers Treatment Programming between 2004-2013

Establish state standards of treatment and oversight for batterers intervention programming

1C. The sentence for a domestic violence offense must include an order to **complete a batterers intervention program** as a condition of probation.

Location in draft policy: page 7, lines 1 – 6.

1D. A **batterers intervention standards oversight committee** shall be formed to establish minimum standards for BIPs, revise the standards as is deemed necessary, and make the standards available to the public. *Location in draft policy: page 7, lines 12 – 29 and page 8, lines 1 – 15.*

1E. A batterer's intervention programs must be **certified by the state** in order to meet the conditions of probation. *Location in draft policy: page 7, lines 7 – 9.*

Key ways to support victims of crime

ADDITIONAL AREAS TO EXPLORE:

Opportunities to improve benefits available to victims of crime through the **crime victim compensation program**

Opportunities to improve consistency in **enforcing orders of protection** issued in Indian Country

Opportunities to implement **victim notification improvements** and systems changes to ensure all victims are enrolled in SAVIN



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Key ways to avert growth in jail and prison populations and avert growing corrections costs

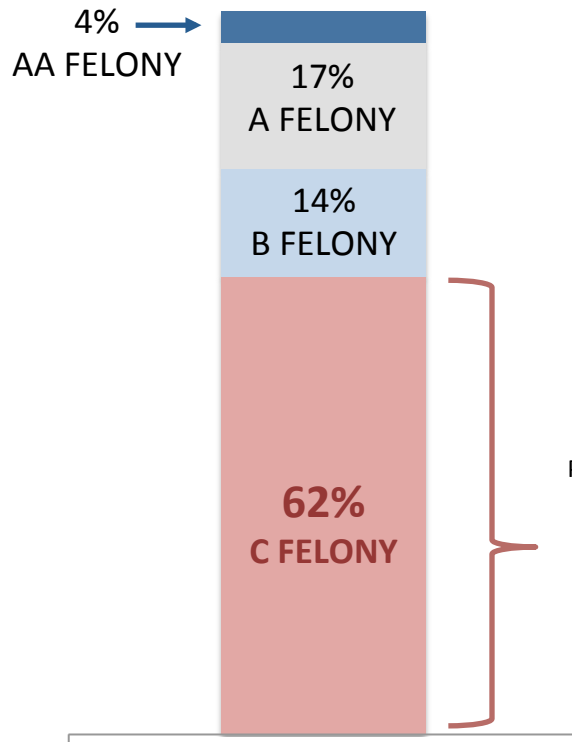
POLICY OPTION 2: Hold people with lower-level offenses accountable with probation and treatment

POLICY OPTION 3: Tailor responses to supervision violations based on risk and seriousness

POLICY OPTION 4: Increase use of good time sentence reductions to limit time in incarceration

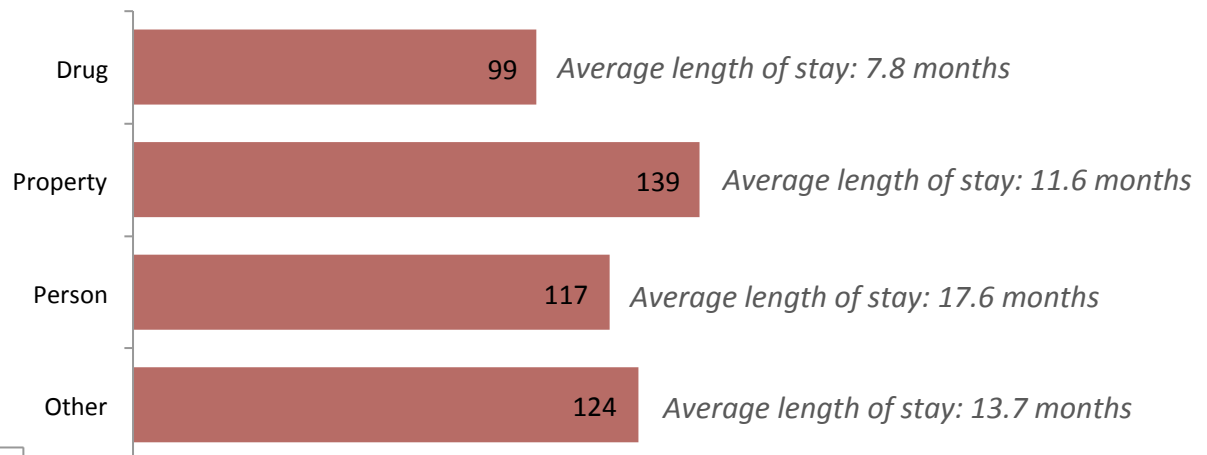
Felony class C's are a broad offense class that comprises nearly two thirds of all admissions to prison

NEW OFFENSE ADMISSIONS BY FELONY CLASS, FY2014
N=777



North Dakota's sentence structure lacks distinction between offenses containing and not containing violence. As a result, negligent homicide and second offense of possession of drug paraphernalia fall within the same felony class.

The state could avert significant savings by diverting some of these offenses to **alternatives to incarceration.**



2014 Prison Admissions

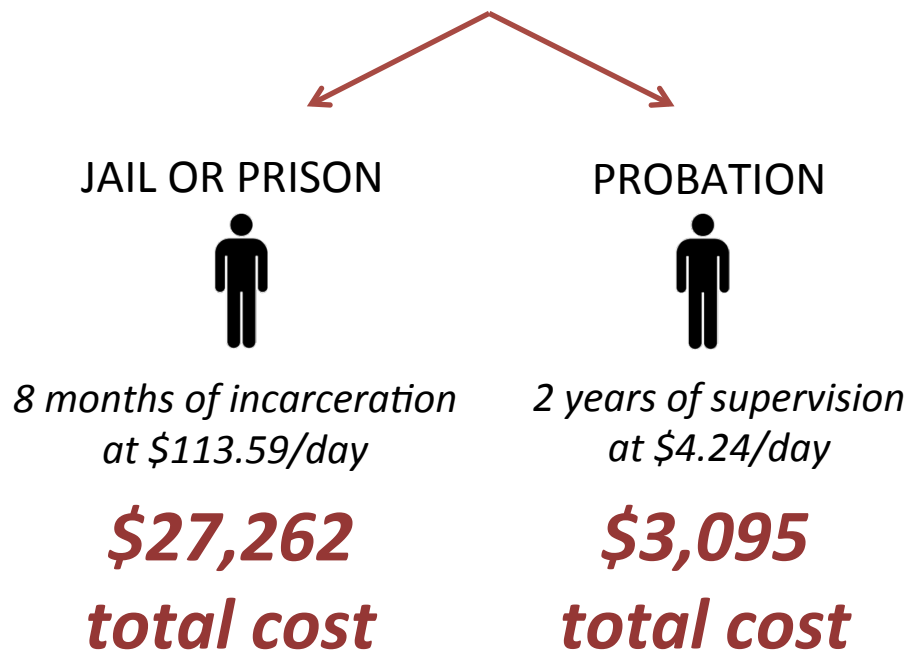
"Other" offenses include DUI, traffic offenses, obstruction, escape, and other offenses.

Misdemeanor A offenses made up 3% of FY2014 prison admissions.

Source: DOCR prison admission data files

Incarceration for lower level offenses creates significant costs for the state and counties without changing the behaviors that lead to recidivism

Sentencing options for people with lower-level drug offenses



Probation provides options to change behavior and lower risk

Tailor supervision intensity based on risk of recidivism and other public safety characteristics

Respond to violations with sanctions

Refer to programs addressing risks and needs

Revoke from probation and re-sentence to incarceration

Avert prison growth by holding people with lower-level offenses accountable with **probation and treatment**

2A. Separate the more than **350 class C felonies** into two classes of offenses. Retain some offenses as class C felonies and move certain offenses to class A misdemeanors. **Retain current penalties** for class C felonies. *Location in draft policy: page 9, lines 2 – 17.*

2B. Statutorily establish that the court will impose a **sentence of probation or a fully suspended incarceration sentence** for class A misdemeanors. *Location in draft policy: page 9, lines 18 – 24.*

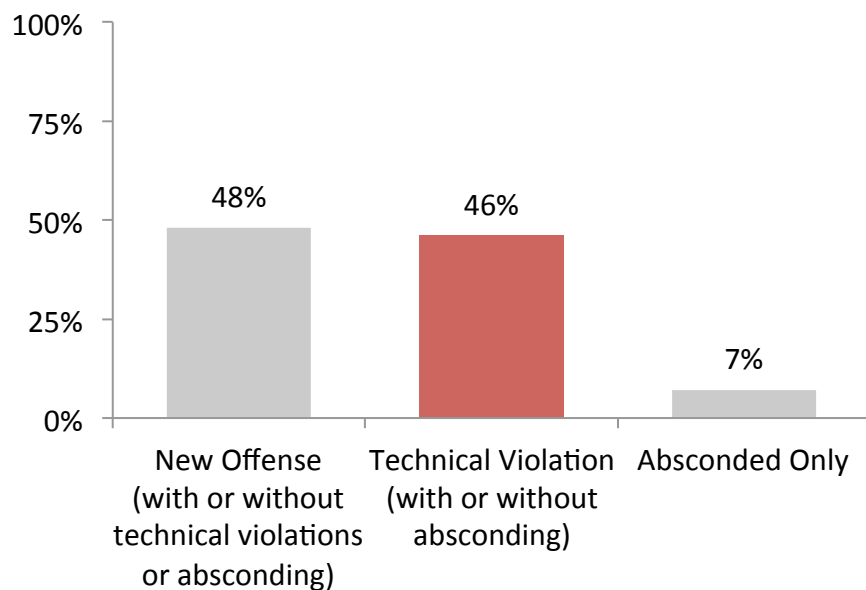
2C. Statutorily establish that the court will impose a **sentence of community service** for class B misdemeanors. *Location in draft policy: page 9, line 25 – Page 10, line 2.*

Avert prison growth by holding people with lower-level offenses accountable with **probation and treatment**

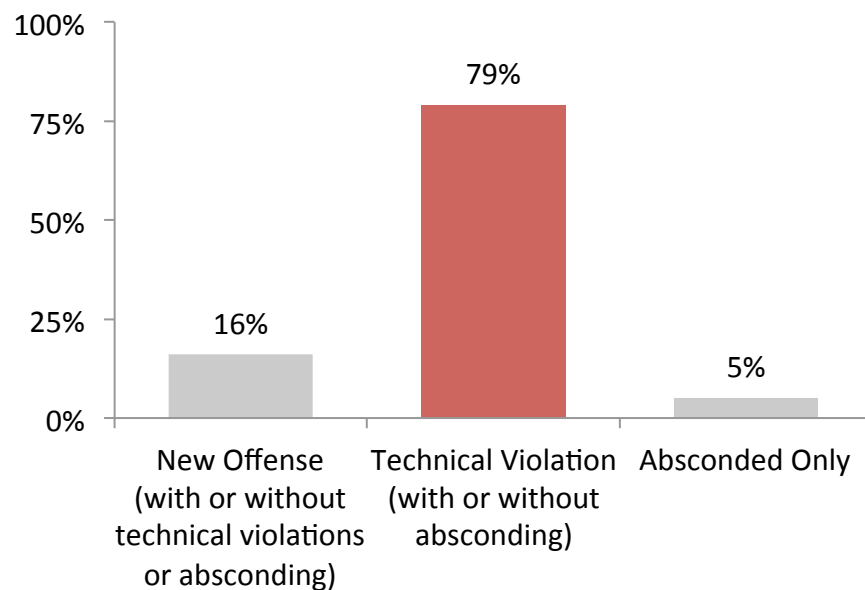
2D. Allow exceptions for sentences to incarceration if the person is concurrently or consecutively sentenced to imprisonment on a more serious charge or there are substantial and compelling reasons why the defendant cannot be effectively and safely supervised in the community. *Location in draft policy: page 9, lines 8 – 13, lines 22 – 24, line 29 – lines 2 on page 10.*

Restructuring how violations escalate into revocations could divert over half of current revocations to alternative sanctions

Reducing revocations for technical violations by just **10%** could avert as much as **\$2.8 million** in state spending that can be reinvested in programs and treatment



PROBATION REVOCATIONS, 2014
N = 1,166



PAROLE REVOCATIONS, 2014
N = 295

Incarceration days are based on prison length of stay.

Source: DOCR supervision data

Avert growth in incarcerated populations by **tailoring responses** to supervision based on risk and seriousness

- 3A.** Classify violations of probation and parole into compliance violations, risk violations, and revocation violations. *Location in draft policy: page 4, lines 8 – 26, and page 13, lines 11 – 29.*
- 3B.** Restrict responses to compliance violations to **community sanctions** or short periods of incarceration. *Location in draft policy: page 4, lines 9 – 16, and page 13, lines 12 – 19.*
- 3C.** Allow community sanctions or longer periods of **confinement of up to 30 days** for risk violations. *Location in draft policy: page 4, lines 17 – 22, and page 13, lines 20 – 25.*
- 3D.** Allow for the initiation of **revocation proceedings** for revocation violations. *Location in draft policy: page 4, lines 22 – 26, and page 13, lines 26 – 29.*

Earned-time sentence reductions for pretrial and jail sentences would enable reinvestment into crime-reduction strategies

Three interventions that provide substantially different benefits per dollar spent

DETER CRIME

Increase law enforcement's ability to use hot spot strategies and deploy additional officers to increase the perceived certainty of apprehension.

\$\$\$\$\$\$
\$\$

REDUCE RECIDIVISM

High quality supervision (risk, need, responsivity), consistent sanctioning, and high quality treatment programs tailored to needs.

\$\$\$\$\$\$

PROLONG INCAPACITATION

Increase length of stay to hold moderate- to high-risk offenders in prison for an additional 3 months, adding 250 to the prison population.

\$\$

Benefit to Cost Ratio

\$ Benefits per dollar of cost.

Incentivize good behavior and reduce incarcerated populations by creating **good time sentence reductions** for individuals with sentences to jail.

4A. Performance criteria includes participation in court-ordered or staff-recommended **treatment** and **education programs** and **good work performance**. *Location in draft policy: page 2, lines 3 – 6.*

4B. While incarcerated in a correctional facility, an offender may earn no more than a one-day sentence reduction per six days served. An inmate sentenced to jail may receive good time sentence reductions for any sentence of which incarceration time is longer than 60 days. *Location in draft policy: page 2, lines 7 – 8 and 10-11.*

4C. An offender may receive **sentence reduction for time spent in custody** prior to sentence and commitment but is not eligible for sentence reduction or sentence reduction credit for time on pretrial probation or other community supervision. *Location in draft policy: page 2, lines 8 – 10.*



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06

Nest Steps

Key ways to reduce recidivism and strengthen community supervision

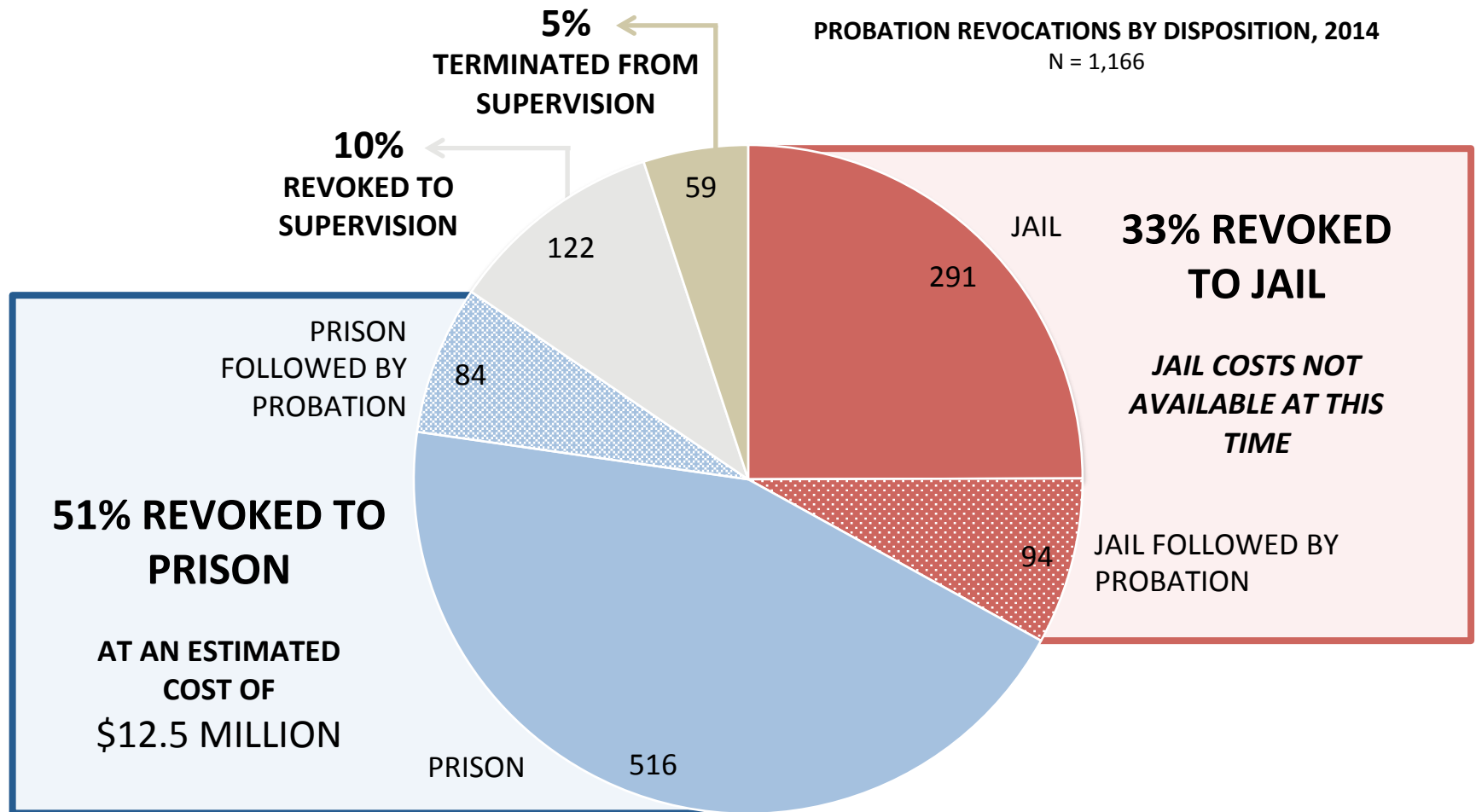
POLICY OPTION 5: Use swift, certain, and proportionate sanctions and incentives for individuals on probation or parole

POLICY OPTION 6: Frontload supervision resources during the period when risk of recidivism is the highest

POLICY OPTION 7: Focus supervision resources on those most likely to re-offend

POLICY OPTION 8: Ensure that people with violent offenses released from prison to the community are supervised

Improve swift and certain responses to supervision violations to increase accountability and avert substantial costs to the state and counties



Revocation rates are for FY2014 and include revocations for any reason.

Source: DOCR supervision data

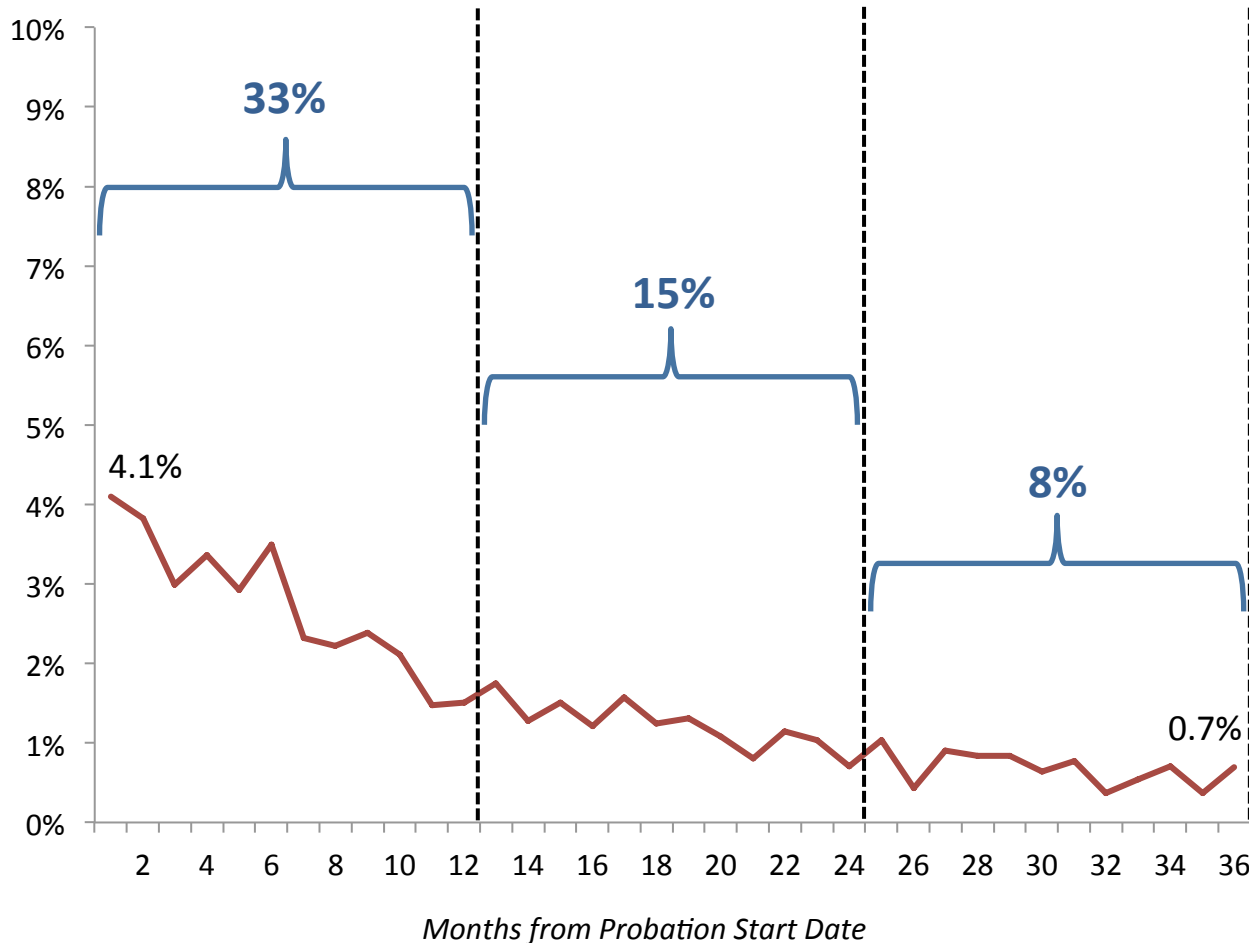
Reduce recidivism by improving use of **swift, certain, and proportionate sanctions** for probationer and parolees

5A. Require probation and parole to apply intermediate measures and incentives in accordance with a **formalized matrix of behaviors and corresponding responses**. The matrix must require officers to **respond swiftly, certainly, and proportionately** to the defendant based on the individual's risk and the severity of the violation and be used in pursuit of improved compliance. *Location in draft policy: page 5, lines 1 – 3, and page 14, lines 6-8.*

5B. When a petition for revocation is submitted to the court, it must **include documentation of violations and responses to violations** imposed by probation or parole officers. *Location in draft policy: page 14, lines 9 – 10.*

Most recidivism occurs in the first year of supervision,
creating the need for frontloading resources

36-Month Rearrest Rates for Admissions to Probation in FY2012



Overall 3-year re-arrest rate is 56% (cumulative across the 36 months in graph at left).

Once “at risk” of being arrested (i.e. recidivating), 2-3% of the cohort are getting arrested each month early on, but that falls to about 1% per month by month 24.

Frontload supervision resources during the period risk of recidivism is the highest

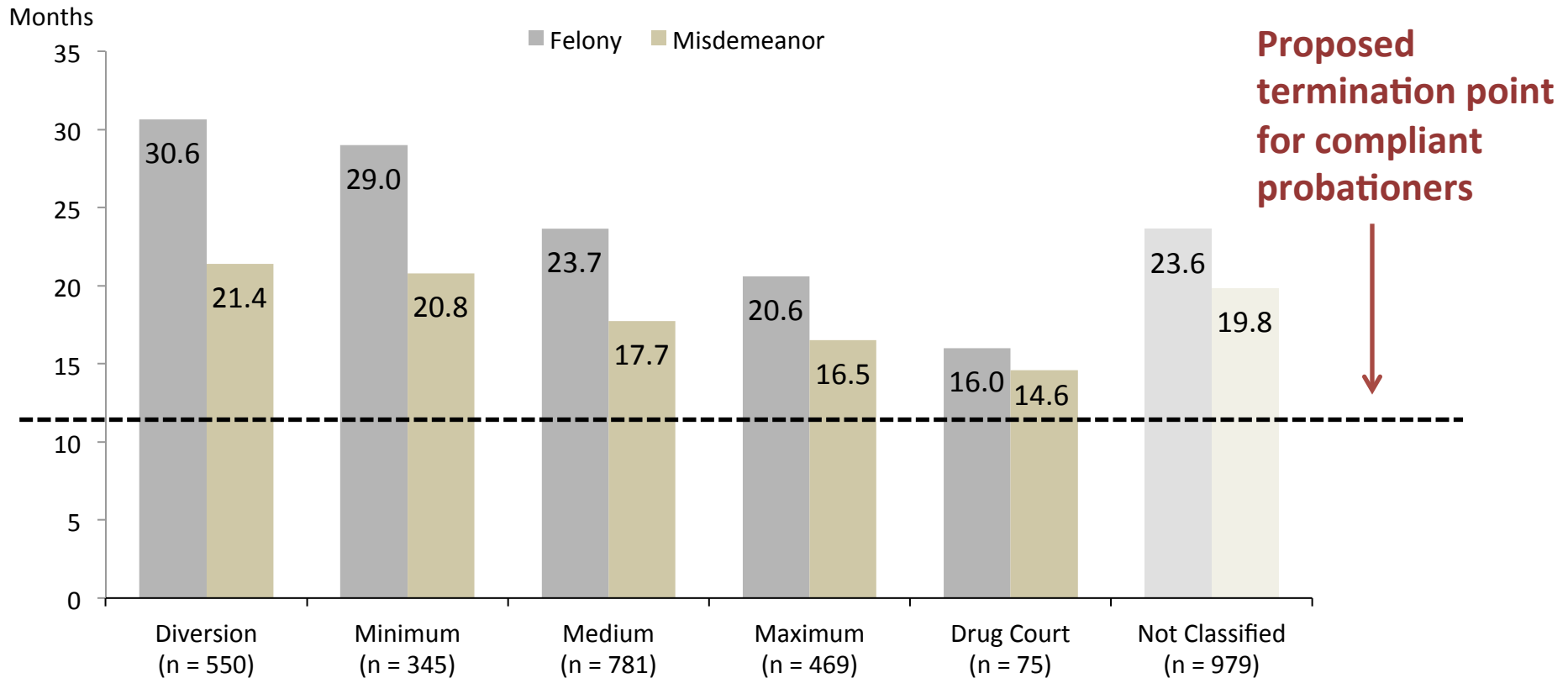
6A. Maintain current caps on **three year probation terms** for class AA, class A, class B and class C felony offenses and maintain the **360 day probation cap** for class B misdemeanors. *Location in draft policy: page 11, lines 8 – 11.*

6B. Reduce the cap for class A misdemeanors to one year. *Location in draft policy: page 9, lines 19 – 24.*

The average probation term exceeds two years,
challenging efforts to focus resources when risk is the
highest

FY2014 PROBATION TERMINATIONS - AVERAGE LENGTH OF STAY BY SUPERVISION LEVEL

N = 3,209



Reduce probation caseloads to focus on those most likely to re-offend by **automatically terminating supervision**

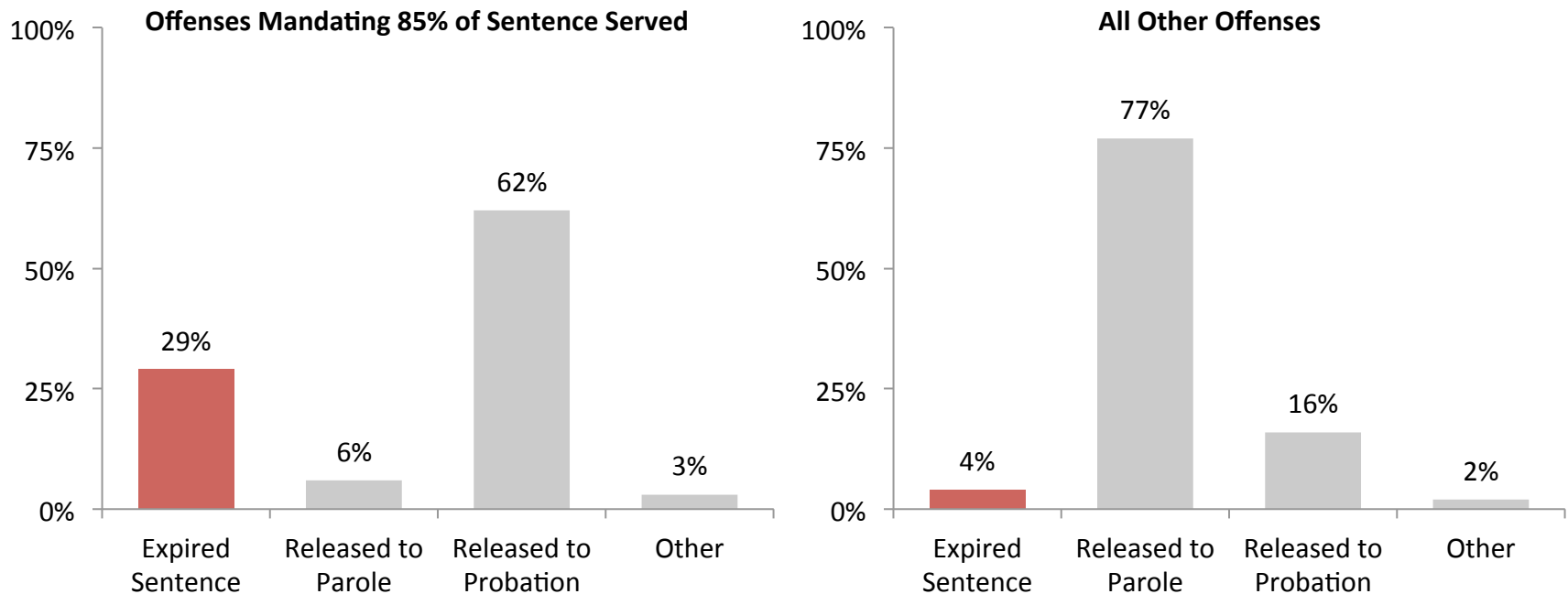
7A. A defendant is eligible for **presumptive termination and discharge** from probation after a period of 12 consecutive months on probation without a risk or revocation violation. **Exemptions** to automatic termination are made for violent offenders. *Location in draft policy: page 16, lines 26 – 31 and page 17, lines 1-2.*

7B. If a departure is made from the presumptive termination, the judge shall state on the record the **reason for denying discharge** from supervision. *Location in draft policy: page 17, lines 7 – 11.*

7C. A defendant with outstanding fines, fees, or restitution orders is **not eligible for early termination**, but may be placed on the lowest level of supervision for the remainder of the payment schedule. *Location in draft policy: page 17, lines 2 – 4.*

A much larger portion of 85 percent sentences are released without post release supervision than all other sentences

29% of inmates in prison for 85% offenses are released with no supervision, compared to only **4%** of inmates in prison for other offenses



Rates shown are for releases from prison during FY2014.

Source: DOCR prison release data files

**POLICY
OPTION #8**

Reduce recidivism and improve public safety by ensuring that violent offenders have **post-release supervision**

8A. Require violent offenders as defined in subsection 1 of 12.1-32-09.1 to have one year of **post release supervision**. *Location in draft policy: page 17, lines 29 – 30.*



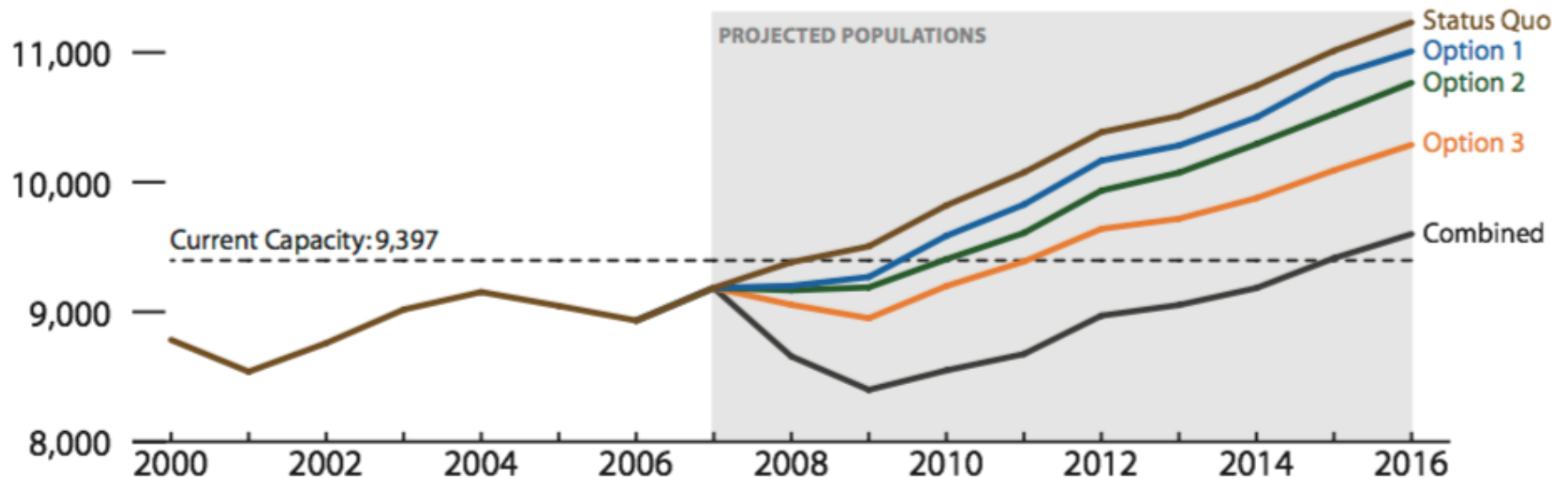
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Next steps

- CSG Justice Center staff will **compile comments** from today's discussion.
- Justice Center staff will meet with Incarceration Issues Committee members to **discuss bill draft language** and additional ideas.
- Bill language will be drafted around **known topics for inclusion**, such as pretrial processes, additional policies to support victims, improvements around data collection, and strengthening existing evidence based practices.
- A new bill draft will be **submitted in September** to reflect these conversations, corrections, and new ideas.
- **Cost aversion and impact projections** will be calculated based on the updated bill draft to be presented in September.

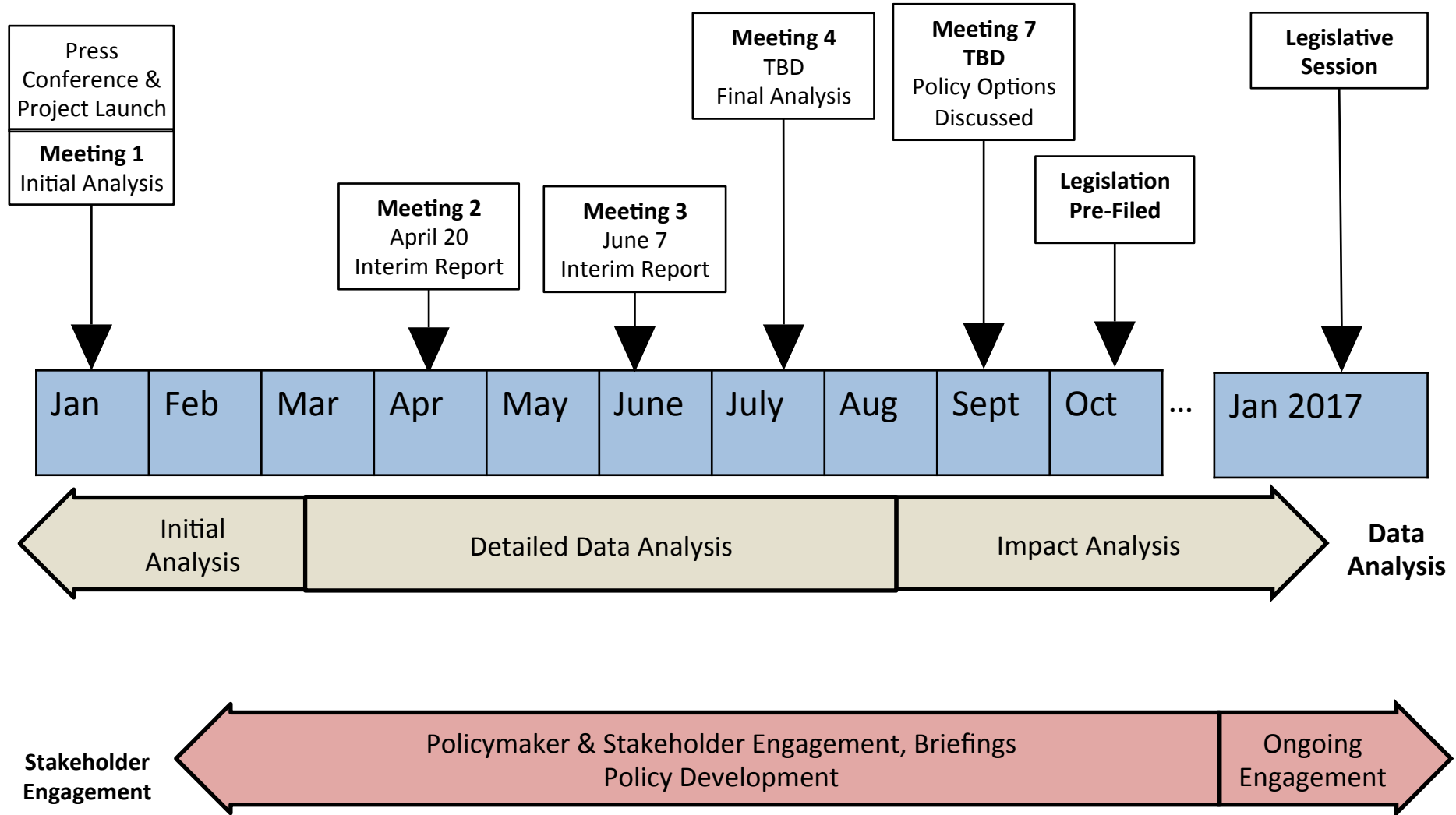
Sample of impact projection modeling from a previous justice reinvestment state



Sample of averted costs and reinvestment from previous justice reinvestment state

		FY2016	FY2017	FY2018	FY2019	FY2020	Total
Averted Costs	Operational Costs Averted	\$4.0M	\$9.1M	\$10.4M	\$10.6M	\$10.6M	\$44.8M
	New Construction Costs Averted	2014 Master Plan Report recommended construction of 1,100 beds by FY2019 at a cost of \$261.6M					\$261.6M
	Total Averted Costs	\$4.0M	\$9.1M	\$10.4M	\$10.6M	\$10.6M	\$306.4M
Reinvestments	Increase the number of probation officers	\$0.1M	\$0.9M	\$2.0M	\$2.5M	\$2.5M	\$8.0M
	Community-based programs and treatment to reduce recidivism	\$2.0M	\$5.0M	\$5.0M	\$5.0M	\$5.0M	\$22.0M
	Improve parole supervision	\$0.3M	\$0.3M	\$0.3M	\$0.3M	\$0.3M	\$1.5M
	Sustainability policies	\$0.5M	\$0.2M	\$0.2M	\$0.2M	\$0.2M	\$1.3M
	Total Reinvestment	\$2.9M	\$6.4M	\$7.5M	\$8.0M	\$8.0M	\$32.8M
Net Savings		\$1.1M	\$2.7M	\$2.9M	\$2.6M	\$2.6M	\$273.6M

North Dakota Justice Reinvestment Timeline



Thank You

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